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1                                    P R O C E E D I N G S

2                                    (Call to order of the court.)

3                                    THE COURT: All right. We're here in 22-cr-612.

4                                    I want to start with the government's motion to  
09:09AM 5 modify Mr. Constantinescu's condition of release.

6                                    Who from the government wants to address that?

7                                    MR. ARMSTRONG: I can, Your Honor. Good morning.  
8 Scott Armstrong for the United States.

9                                    THE COURT: Go ahead.

09:09AM 10                                    MR. ARMSTRONG: So, Your Honor, obviously we laid out  
11 the issues that are very concerning to us and we wouldn't have  
12 probably filed this motion except for the rapid escalation of  
13 Mr. Constantinescu's conduct.

14                                    You know, we weren't going to run in here with  
09:09AM 15 our hair on fire because he called Mr. Carter a dumb  
16 prosecutor; but after he directly reached out to a potential  
17 witness in this case and threatened the witness, according to  
18 the witness, and attempted to intimidate the witness, things  
19 changed.

09:10AM 20                                    And it also changes because presumably there was  
21 a leak of the protective order where that same witness's  
22 information and his personal picture was put online and then  
23 disparaged online in an account that is very closely connected  
24 to Mr. Constantinescu.

09:10AM 25                                    So the reason why this is important is, Number 1,

1 there are a litany of his violations of his pretrial  
2 conditions.

3 But Number 2, we're about to release very  
4 sensitive victim information in this case; and three days after  
09:10AM 5 we tell defense counsel of that fact, Mr. Constantinescu likes  
6 posts on Twitter in which he disparages the victims in this  
7 case.

8 And so obviously it's troubling to have a  
9 defendant in a criminal case contact a witness, but it's even  
09:11AM 10 more troubling if that happens to the actual victims in this  
11 case and so there needs to be some remedy, there needs to be  
12 some measures that ensure that the confidential information in  
13 this case does not get further leaked and further witnesses in  
14 this case not harassed and intimidated.

09:11AM 15 THE COURT: Mr. Ford?

16 MR. FORD: Thank you, Your Honor.

17 I've had the opportunity to go through the  
18 government's papers. Some of it is accurate, some of it is  
19 not.

09:11AM 20 But I will start by saying there appears to have  
21 been an issue in just late December shortly after the  
22 indictment. It was dealt with in-house. I understood that  
23 that was taken care of and resolved.

24 THE COURT: "Dealt with in-house" meaning what?

09:11AM 25 MR. FORD: I had a conversation with my client about

1 what he was permitted to do and not do under his bail  
2 conditions.

3 There is a secondary issue that came up in  
4 relation to his communication with a former close friend and  
09:12AM 5 colleague. I do have in my possession communications in the  
6 not too far past where Mr. Constantinescu and the individual  
7 they were referring to were speaking in sort of a chummy,  
8 friendly sort of fashion.

9 After that time, Mr. Constantinescu sent a  
09:12AM 10 message which the government views as being threatening.

11 THE COURT: It looked threatening to me.

12 MR. FORD: There is a context to it, and I'm not sure  
13 that they're reading it correctly. That said, you know, one  
14 issue that this raises is, you know, because of my client's  
09:12AM 15 relationship with multiple people who he remains friends with,  
16 I do think he needs to be able to stay in contact with them.

17 That said, I have given him instructions that he  
18 certainly is not to contact this individual, any other  
19 potential witness, or any victim in this case. I understand  
09:13AM 20 that to be a strict condition of bail and to the extent that my  
21 client let his anger get the best of him, I feel it has been  
22 dealt with in-house and I do not anticipate a repeat of  
23 anything the government is discussing.

24 THE COURT: Why should I permit him to remain free and  
09:13AM 25 to be able to communicate on social media at all?

1 MR. FORD: Well, certainly one thing is to prohibit his  
2 communications on social media. We would certainly, you know,  
3 view that as being a more appropriate remedy than anything more  
4 strict. You know, to the extent the government wants a  
09:14AM 5 blanket, you know, bar on his use of social media, I'm not  
6 opposed to it.

7 At least some of the incidents that are described  
8 in the brief, those postings, I understand, were made by other  
9 people and incorrectly attributed to Mr. Constantinescu; but he  
09:14AM 10 has also been advised that to the extent it happened, and I  
11 don't believe it didn't in some of these instances, he's also  
12 not permitted to instruct other individuals to make  
13 communications on his behalf through social media. It's just  
14 not a work-around that we're going to permit for him.

09:14AM 15 THE COURT: Does your client want to say anything?

16 DEFENDANT CONSTANTINESCU: Your Honor, I apologize.  
17 This whole thing has, like, turned our lives upside down and in  
18 the beginning, I was extremely angry and, you know, it got the  
19 best of me and it won't happen again.

09:15AM 20 THE COURT: All right. All right.

21 I'm ordering you to refrain from any  
22 participation in social media --

23 DEFENDANT CONSTANTINESCU: Yes, sir.

24 THE COURT: -- in any form; and if I hear of something  
09:15AM 25 happening again, I'm going to put you in jail.

1 Do you understand?

2 DEFENDANT CONSTANTINESCU: Yes, sir. Yes, Your Honor.

3 THE COURT: And I know we have some other of the

4 defense lawyers out here. Caution your clients. The

09:15AM 5 defendants raised a concern about what the government was going

6 to put on social media to contact victims and I toned it down.

7 I don't want to have to do that with the defendants, but I

8 will.

9 So I'm cautioning all the other defendants, you

09:15AM 10 know, don't go there. This is not the right thing to do.

11 Let's try our case in front of the jury when it comes that

12 time. Let's leave the witnesses to fall where they may.

13 All right. Mr. Ford, did you have -- you had

14 another motion, I believe, did you not?

09:16AM 15 MR. FORD: Yes. We have filed a motion seeking a bill

16 of particulars as well as requesting grand jury transcripts

17 related to a specific issue dealing with specific counts in the

18 indictment.

19 We believe upon review of the superseding

09:16AM 20 indictment --

21 THE COURT: Would you pull that microphone closer to

22 you?

23 MR. FORD: Yes.

24 We believe that the superseding indictment is

09:16AM 25 infirm under both the Federal Rules of Criminal Procedure and

1 the Constitution.

2 There are three statutes that are alleged to have  
3 been violated by my client. One is related to money  
4 laundering. We talked about it during the last hearing.

09:17AM

5 There's a conspiracy charge under Section 1349  
6 based on violations of 1348, and then there are five separate  
7 counts of violations of 1348, specific instances of securities  
8 fraud.

09:17AM

9 Now under Subsection 2, the government is  
10 required -- it's an essential element to show a false pretense,  
11 representation or promise. What we have in the superseding  
12 indictment is a series of alleged tweets, 21 of them by my  
13 client, that support three of these five securities fraud  
14 counts. For two of them, we just have a stock ticker. We  
15 don't have any information.

09:17AM

16 My issue is not with the statements. I can see  
17 what they are, and I listed them out for the Court. My issue  
18 is that on its face, it's not apparent why they're false and  
19 having done several targeted searches in the hundreds of  
20 thousands of pages they've given us, there seems to be nothing  
21 that supports their falsity.

09:18AM

22 To give you an example of one of the two types of  
23 statements that we see, the first is sort of predictions about  
24 the future price of a security.

09:18AM

25 The second is future intent of my client and



1 specifically whether he's going to buy or sell a security.

2 If we look at the first securities fraud count  
3 against him related to Camber Energy, all four of the tweets  
4 that are described as false in the indictment and were  
09:18AM 5 described as false to the grand jury relate to a price  
6 prediction.

7 He says: "CEI is going to 10."

8 "CEI is a \$10 stock all day long."

9 Now, these tweets came shortly after my client  
09:18AM 10 had suggested that the stock would go to 1, which it did; that  
11 it would go to 3; that it would go to 5, which it almost did.  
12 It went to, I think, about \$4.80. So his earlier predictions  
13 were certainly true.

14 Of course, Camber Energy is a carbon-capture  
09:19AM 15 company. This is a time where green stocks were hot. The  
16 current administration, Elon Musk, other people were all sort  
17 of talking about carbon capture as being the solution to global  
18 warming or climate change. This is the context in which my  
19 client was stating these things. There is nothing on their  
09:19AM 20 face to indicate to me why they're false.

21 In our experience doing securities fraud  
22 litigation both against the SEC and in the criminal context,  
23 this is a noncontroversial issue. Ten times out of ten, the  
24 government comes in and says something like, "Hey, look, your  
09:19AM 25 client has put out an offering memorandum. They said the

1 traffic light was red and the traffic light was green," right?  
2 And we know exactly then what the falsity of the statement is.

3 I simply cannot tell, either from the face of the  
4 complaint or in the hundreds of thousand of pages.

09:20AM

5 There's a second type, which is statements of  
6 future intent. I can give you an example with regards to the  
7 securities fraud count for DatChat.

09:20AM

8 It says: "\$DATS I'm holding shares LT. I could  
9 careless if a short report comes out. I'll gobble up the dip  
10 and F them."

11 And the government has chosen to interpret the  
12 letters "LT" to mean long-term. We have a disagreement with  
13 that, but we can accept it as true for the time being.

09:20AM

14 What we've provided in our reply brief is that  
15 not only did Mr. Constantinescu hold shares at the time that he  
16 sent out that tweet, but he held a significant, huge volume of  
17 shares, half a million dollars in securities of that stock.

09:20AM

18 Not only did he close the day as a day trader  
19 with half a million dollars' worth of DATS stock, he woke up  
20 first thing in the morning and started buying more. We've gone  
21 over the numbers where he winds up the following day holding  
22 about a million dollars in those shares.

09:21AM

23 Now, the government is correct that five days  
24 later he did, in fact, close that position. Where they're  
25 wrong is that he then buys again on October 25th, ten days

1 later, sells, and then buys again in November. This all took  
2 place over the span of two and a half months starting in  
3 August.

4 So with regards to the statement: "DATS I'm  
09:21AM 5 holding shares long," it appears not only is there no reason to  
6 say that it's false, it appears to be true. And what my  
7 concern is is first on getting the particulars, but also how  
8 this was presented to a grand jury.

9 Now, the grand jury should not have just been  
09:21AM 10 told, "Hey, this was false." They should have been provided  
11 with some factual background or predicate as to its falsity;  
12 and if the government did not do that, I think it's a defect in  
13 the legal presentation to the grand jury because they have  
14 essentially excised not only an element of a 1348(2) violation,  
09:22AM 15 but the element, the very fundamental thing that makes  
16 securities fraud under 1348.

17 The government has responded by basically giving  
18 us general categories of why they think these statements are  
19 false. I don't think that gets them across the finish line.

09:22AM 20 Again, they sort of just give us generic  
21 categories. Hey, your client made a price prediction and it  
22 was false, right?

23 Hey, your client said he was going to do  
24 something in the future and according to the government, he  
09:22AM 25 didn't do that or did something different.

1           That still does not answer the question why these  
2           21 statements appear in a superseding indictment with the word  
3           "false" before them.

4           The government has done one other thing that I  
09:23AM 5           want to address quickly with the Court if you'll entertain it.

6           They have noted in their response that they  
7           provided defendants a list of all of the stock tickers that  
8           make up the conspiracy charge. According to the government,  
9           these eight individuals were involved in 402 separate  
09:23AM 10           pump-and-dump schemes over the span of three years.

11           And if you'll indulge me, I just want to pull up  
12           so you can visualize what we got as a major part of the  
13           government's responses that in June they're going to be  
14           providing us additional information.

09:24AM 15           So this is -- Your Honor, this is the start to  
16           the spreadsheet. What this represents, according to the  
17           government, is each individual pump-and-dump scheme that the  
18           defendants are alleged to have conspired to commit and then it  
19           lists each defendant by last name and then a 1 in the column  
09:24AM 20           signifies that that defendant sold shares during that time  
21           period.

22           With regards to Mr. Constantinescu, the first  
23           time he sold shares on this list, you'll see it's a stock ACST.  
24           So it's saying that between June 3, 2020, and June 5, 2020,  
09:24AM 25           these eight defendants were involved in a conspiracy to commit

1 a pump-and-dump of ACST and then it shows Mr. Constantinescu --  
2 let's see, Mr. Deel, Mr. Hennessey and Mr. Hrvatin all traded  
3 the stock during that relevant time period.

4 The first and immediate thing that I think  
09:25AM 5 anybody would think is if these eight individuals were in a  
6 conspiracy why did they not all sell it, but we'll leave that  
7 for another day.

8 The second example in which -- the second stock  
9 ticker in which Mr. Constantinescu appears is ADMP where  
09:25AM 10 between January 20th, '21 and January 28, '21, these eight  
11 individuals are alleged to have engaged in a pump-and-dump  
12 scheme of that stock.

13 Again, it's interesting to note that only  
14 Mr. Constantinescu and Mr. Deel actually sold that security  
09:25AM 15 during that relevant time period, which again raises the issue  
16 as to why it would have been that these eight individuals  
17 engaged in a conspiracy but then did not participate in what  
18 would have created the fruits.

19 In addition -- so what the government's position  
09:26AM 20 is, we've given you this chart and now on June 5th were going  
21 to tell you what each defendant said about these stock tickers  
22 that was purportedly false.

23 I can short-circuit the government having to do  
24 that as they have already provided that document in discovery  
09:26AM 25 so I want to just quickly pull that up as well.

1 I was hoping to pull this up as an Excel  
2 spreadsheet, but I understand the Apple computers don't work  
3 well with the Court's system so we just printed this out.

4 THE COURT: Nothing works well with our system.

09:27AM 5 MR. FORD: Duly noted.

6 So this is the first of a multi-tab Excel  
7 spreadsheet. We did not print out all the tabs. They were  
8 just too voluminous.

9 But what this Excel spreadsheet that's in the  
09:27AM 10 hundreds of thousand of pages of production shows is every time  
11 my client, Mr. Constantinescu, had a communication about the  
12 specific stock ticker.

13 So you will see at ACST, as we just spoke about,  
14 he tweeted 25 times about the stock. Now, that's not just  
09:27AM 15 during the time period of the purported conspiracy. That's  
16 over the span of the entirety of his having a Twitter account  
17 and then it looks like he had zero group messages about it and  
18 eight times he communicated with somebody on direct message.

19 Now, ADMP, which is the other stock I mentioned,  
09:27AM 20 it looks like he didn't tweet at all about it. He had one  
21 group message about it and zero direct messages.

22 Now, if we had the Excel spreadsheet up, there is  
23 then three additional tabs, one for tweets, one for group  
24 messages and one for direct messages and that provides all of  
09:28AM 25 the statements that my client has ever made about these and it

1 appears then the word "false" is in some column. So I don't  
2 know if that's a reference to their falsity. What it does not  
3 do is explain why they're false, but it does give us all of the  
4 communications.

09:28AM 5 So we already have that so I don't believe we  
6 need that in June, although to the extent that the case has  
7 changed and they're relying on other statements, we would take  
8 the government up on their offer.

9 There is one other piece -- again, if you'll  
09:28AM 10 indulge me -- to this that I would like to show the Court as I  
11 think it's directly relevant to the government's response as  
12 well as to why we think it is so critical that we get access to  
13 the grand jury transcripts.

14 Let's start with ADMP. This represents the  
09:29AM 15 evidence as to how my client conspired to commit securities  
16 fraud based on purported false statements made through Twitter.  
17 He never tweeted about it. He never had anything to say about  
18 the stock. That's ADMP.

19 And by the way, these are just the first of two  
09:29AM 20 on the list of 400; so we'll show you ACST next and we'll see  
21 what he had to say about it.

22 So, Your Honor, during the time period of the  
23 purported conspiracy to pump and dump ACST from June 3, 2020,  
24 to June 5, 2020, this is the entirety of the tweets that my  
09:30AM 25 client sent out about this.

1 The first said: "\$ACST joining for swing now."

2 That's undeniably a true statement based on trade  
3 records.

4 The second has a hashtag "ACST" and then a  
09:30AM 5 picture of Zack Morris kissing Lisa. For those who weren't  
6 *Saved By the Bell* fans, that, in fact, happened even though he  
7 had been dating Kelly for years leading up until that.

8 And then on June 4th, 2020, he explained that he  
9 had added on the dip for the run up.

09:30AM 10 Again, a true statement based on trade records.

11 This is the entirety of the statements on ACST  
12 during that time period that the government claims that they  
13 are going to provide on June 5th to show that my client had  
14 conspired to commit a pump-and-dump.

09:31AM 15 As we stated at the opening, it is a fundamental  
16 element of a securities fraud claim. We need to know why these  
17 statements, what about them was false prior to going to trial,  
18 one; and two, I would like to know how the grand jury was  
19 presented, for example, these three tweets and came to the  
09:31AM 20 conclusion that my client said something false about this  
21 stock.

22 It does not resonate with the trade records and  
23 this makes up the entirety of his purported conduct with regard  
24 to the conspiracy.

09:31AM 25 I just want to finish by saying while I've talked



1 about the conspiracy charge, it was brought into play by the  
2 government, but our motion is focused specifically on 1348,  
3 five specific counts of securities fraud for which my client  
4 purportedly made 21 false statements.

09:31AM 5 And, Your Honor, I think we deserve to know why  
6 they were false first. And then to the extent that the  
7 government can't come up with a legitimate theory, we deserve  
8 to know how it is that they were able to persuade a grand jury  
9 to indict him on such spurious grounds as what I just showed  
09:32AM 10 you.

11 So I'm available to answer any questions now or  
12 after the government's presentation, but I appreciate you  
13 allowing me the time.

14 Thank you.

09:32AM 15 THE COURT: Who wants to respond for the government?

16 MR. ARMSTRONG: Thank you, Your Honor.

17 So, Your Honor, there's just a lot to unpack  
18 there. I guess I can start from the last point that Mr. Ford  
19 made about the grand jury.

09:32AM 20 It is black letter law from the Supreme Court  
21 that a valid indictment cannot be attacked based on different  
22 explanations of the evidence, based on supposed incompetencies  
23 of the evidence.

24 And that's *United States versus Williams*, which  
09:32AM 25 has been adopted in this circuit, of course, since it was

1 issued a long, long time ago.

2 So the grand jury issue is an easy one. You  
3 cannot just speculate about potential infirmities in the  
4 evidence and then be able to troll through the grand jury  
09:33AM 5 transcripts. That is clear, and as Your Honor knows, well  
6 established. So that one is easy.

7 The second part is about the disclosure that we  
8 made on March 31st, 2023. So if Your Honor hasn't had a chance  
9 to look at it, it's Exhibit 2 to our response,  
09:33AM 10 Document Number 234.

11 And so we describe exactly what we were  
12 disclosing here, identifying at least one false or misleading  
13 statement by a defendant on Twitter, Atlas Trading Discord or  
14 both, similar to the false or misleading statements alleged in  
09:33AM 15 Paragraphs 1 and 13 of the superseding indictment and then  
16 aggregating each defendant's profit or loss for that stock  
17 ticker during the time period.

18 What we're not saying is that every single person  
19 tweeted falsely during this date range and that's been clear  
09:34AM 20 and it's clear from the evidence that Mr. Ford just showed.

21 And this evidence is not just relevant to the  
22 conspiracy charge, evidence can have dual purposes. In this  
23 case, a lot of these tickers do.

24 We've charged, Number 1, a conspiracy; but we've  
09:34AM 25 also charged a scheme to defraud. And obviously if people are,

1 like the defendants, are posting false and misleading  
2 information in other stocks, that is relevant and intrinsic  
3 evidence to the scheme counts in which they are charged.

4 Now, are we going to have lots and lots and lots  
09:34AM 5 of evidence that show the conspiracy and show the coordination  
6 between them on Twitter direct messages, on Atlas Trading  
7 direct messages and in texts amongst themselves? Absolutely.

8 But to say that every single ticker on this  
9 11-page list has to be evidence of the conspiracy is just a  
09:35AM 10 fundamental misreading of what we have produced, how we're  
11 going to argue it and how we're going to prove it at trial.

12 So I think that one is pretty easy to dispose of  
13 as well.

14 One thing that Mr. Ford keeps talking about is  
09:35AM 15 how he just can't possibly figure out what our theory is and  
16 the theory of the falsity. And I thought that I had, you know,  
17 maybe misdrafted part of the indictment and so I went back and  
18 I checked and it's actually in Paragraph 14 of the indictment  
19 exactly what the theory of falsity is. It's not a surprise.  
09:35AM 20 No one is hiding it.

21 Paragraph 13, as Your Honor knows, describes all  
22 the various types of false statements that are false and  
23 misleading in this case and it lists out -- one, two, three,  
24 four -- four types of false and misleading statements.

09:36AM 25 And then if Mr. Ford wants to understand why

1 these statements are false and misleading, which he apparently  
2 can't do, he has to read Paragraph 14 of the indictment, the  
3 paragraph that comes exactly after the paragraph that describes  
4 the types of false statements in this case.

09:36AM 5 And Paragraph 14 says -- you can just read it.  
6 "These messages were false and misleading, and omitted material  
7 information, because the defendants concealed their intent to  
8 use these messages to induce other investors to purchase the  
9 securities so that the defendants could sell their shares at a  
09:36AM 10 higher price at and around the time of the messages."

11 And it goes on and gives you even more detail  
12 about the theory of falsity.

13 Again, Paragraph 14: "In this way, the  
14 defendants used social media to induce other investors to  
09:36AM 15 purchase and hold the same securities that the defendants were  
16 selling or dumping so that the defendants could maximize their  
17 own profits."

18 The theory of falsity is literally in the  
19 indictment that the defendants have had since December.

09:37AM 20 And, Your Honor, as you know, we go through  
21 numerous examples in the indictment; but sometimes, if you'll  
22 indulge me, things gets lost in the words and it's more helpful  
23 to actually visualize it.

24 So this is something I put together last night  
09:37AM 25 for DATS, which is one of the counts in the indictment.

1                   Mr. Constantinescu tweets on October 13, 2021:  
2     "\$DATS See you on Mars."

3                   It may seem odd, a statement, "See you on Mars,"  
4     but that kind of statement has immense importance in the  
09:37AM 5     FinTwit committee. It suggests and indicates to others that a  
6     stock is going to appreciate in value very rapidly. It's kind  
7     of like saying it's going to go to the moon.

8                   And so what does Mr. Constantinescu start doing  
9     seven minutes after posting: "See you on Mars," he starts  
09:38AM 10     dumping his shares. He sells 80,000, 98,000, 95,000, 30,000,  
11     90,000, 18,000, 30,000, 25,000. He sells over 466,000 shares  
12     of DATS after telling the world: "See you on Mars." The stock  
13     is going to the moon.

14                  He sells 91 percent of his shares that he's  
09:38AM 15     holding at the time immediately after that post to encourage  
16     everyone else to buy and he pockets about \$5 million.

17                  And then later that night, after he sells  
18     91 percent of his shares in DATS, he says: "\$DATS I'm holding  
19     shares long-term."

09:39AM 20                  What does he conceal? He conceals, as we state  
21     in Paragraph 14 of the indictment, that he just sold 91 percent  
22     of his shares and pocketed \$5 million. He does not make a peep  
23     about that to all of his followers who are trusting him and  
24     relying on what he's telling them.

09:39AM 25                  So why is that false? This is a Fifth Circuit

1 pattern instruction from the wire fraud statute, which  
2 Your Honor is, of course, familiar with: "A false statement is  
3 something that is known to be untrue or it constitutes a half  
4 truth or effectively omits or conceals a material fact,  
09:39AM 5 provided it is made with the intent to defraud."

6 I'm holding shares long-term. Look at me. I  
7 have confidence in this stock without mentioning that he just  
8 sold 91 percent.

9 And it goes on. It happens again the next day.  
09:39AM 10 Mr. Constantin starts buying more shares of DATS. He purchases  
11 approximately 650,000 more shares at an average price of 9.74.

12 He does the same exact thing. He tweets on  
13 October 14th at 11:30: "\$DATS Let's do a short report at the  
14 bottom. LOL. Idiots squeeze these hoes. \$DATS 30++."

09:40AM 15 That is Mr. Constantinescu's price target that  
16 he's been beating the drum about for DATS for the past month or  
17 so.

18 And, again, what does he do immediately after  
19 saying: "\$DATS 30++," when the stock is trading around \$11,  
09:40AM 20 six minutes later he sells 50,000; one minute later, 50,000;  
21 three minutes later, a hundred thousand; 10 minutes later,  
22 another hundred thousand. He sells 300,000 shares, about half  
23 of his position and, again, pockets about \$700,000, telling the  
24 world, telling his followers: "\$DATS 30++" while concealing  
09:41AM 25 that he's selling minutes after that post.

1 By 10:18, he's out entirely.

2 Now, Mr. Ford mentions, oh, but Mr. Constantin,  
3 he was actually holding shares on 10/25.

09:41AM

4 That could not be a more misleading argument. On  
5 10/25, Mr. Constantin held shares for 30 minutes, 30 minutes.  
6 It was a quick trade. There was no long-term strategy as he  
7 told his followers.

09:41AM

8 And then on 11/10, which is mentioned in  
9 Mr. Ford's motion as well, Mr. Constantinescu held less than  
10 \$3,000 in DATS for less than 24 hours. So the fact that he  
11 held shares that are a pittance compared to what he sold out as  
12 does not move the needle at all.

09:42AM

13 And, Your Honor, we're going to prove examples  
14 like this again and again and again and it's going to  
15 demonstrate exactly what we just showed.

16 I have another example here for BBI. I'm happy  
17 to walk you through it if you would like; but if not, I can  
18 answer any questions as well.

09:42AM

19 THE COURT: Okay. Mr. Ford, why isn't the government,  
20 what they've provided, sufficient?

21 MR. FORD: He's a day trader.

22 THE COURT: When you say one thing and do another,  
23 isn't that what the jury, ultimately the fight is going to be  
24 over in front of the jury?

09:42AM

25 MR. FORD: Well, only to the extent that we're willing

1 to accept that the United States government can put  
2 restrictions on traders once they've made an affirmative  
3 statement. Now, the issue has to do with vagueness of  
4 application of the statute and my client's due process rights.

09:42AM 5 THE COURT: That has to do with the law though. That  
6 doesn't have to do with whether they've sufficiently disclosed  
7 what they're doing or what they're alleging.

8 MR. FORD: Well, there's two things. I don't think  
9 what he's doing contradicts what he's saying for the obvious  
09:43AM 10 reason that stock prices move. There is nothing in the  
11 securities laws that requires an individual to hold a share for  
12 an indefinite period of time as a stock price is going down.  
13 That's the first thing.

14 They're attempting to impose on my client a  
09:43AM 15 standard that's higher than the securities laws imposes on  
16 insiders who, for example, are permitted to enter into 10b5-1  
17 plans that permit them to dispose of securities even though  
18 they're insiders and have insider information.

19 According to the government, once my client has  
09:43AM 20 taken the position that he believes a security will hit a  
21 certain price -- and, again, it's a prediction. It's not a  
22 target. He is not a registered, you know, advisor. He's not  
23 an analyst.

24 They're saying that once he makes that  
09:44AM 25 prediction, he is indefinitely barred from selling the stock.



1 I can give you an example. In 2011, Netflix  
2 stock rocketed to \$50 and there were people at that time who  
3 said Netflix is going to go to 500 one day and then shortly  
4 thereafter, it dropped down to \$16. It took 10 full years for  
5 Netflix to get back up to \$500.

09:44AM

6 Was the statement false at the time that it was  
7 made in 2011? Because according to the government, the person  
8 who said Netflix is going to go to 500 one day has to spend ten  
9 years in prison awaiting that stock to reach that target.

09:44AM

10 As day traders, and everybody knows this, the  
11 term "long" means buy, the term "short" means short selling.  
12 The fact that my client or other individuals were representing  
13 to the public that they were long, meaning they were buying a  
14 stock, does not and cannot, as a constitutional matter, as a  
15 due process matter, cannot require them to hold those shares  
16 for an indefinite period of time. That's what the government  
17 is imposing.

09:45AM

18 Right now, if I have a separate client who calls  
19 me on the phone and I say -- I got really excited. I said,  
20 "Amazon is going to increase in price."

09:45AM

21 Now it's going down. I want to sell my shares.  
22 What is my advice to them? I don't know. I don't know if you  
23 can ever sell them. You can't sell them in 30 minutes  
24 according to the government. You can't sell them in five days  
25 according to the government. I don't know how long you have to

09:45AM

1 hold them for. Maybe a year, maybe five years, maybe like  
2 Netflix, you have to hold them for 10 years.

3 But it can't possibly be the case that the  
4 government can place this type of restraint on an individual's  
09:45AM 5 bona fide market transactions in securities without any  
6 fiduciary duty, without any obligation. They must be able to  
7 participate in the free market and make these sales at the time  
8 that they deem appropriate regardless of a price prediction  
9 that came earlier, you know, at some time.

09:46AM 10 THE COURT: All right. I'm going to deny the motion.

11 I understand your argument, Mr. Ford; and it may  
12 be a good argument. But what you're really arguing goes to  
13 does the government even have a claim here. You're basically  
14 saying what your clients are doing is not illegal.

09:46AM 15 And that may be -- that's a different motion.

16 MR. FORD: We happen to think that, and we plan on  
17 bringing it.

18 THE COURT: I assumed I'd get it.

19 MR. FORD: Thank you, Your Honor.

09:46AM 20 THE COURT: All right.

21 MR. ARMSTRONG: Thank you, Judge.

22 THE COURT: All right. Let me switch over.

23 Mr. Hilder?

24 MR. HILDER: Yes, sir.

09:46AM 25 THE COURT: Why don't we talk about Mr. Rybarczyk's

1 funds.

2 MR. HILDER: On both motions?

3 THE COURT: Yes.

4 MR. HILDER: Yes, Judge. You want to take them in any  
09:46AM 5 particular order?

6 THE COURT: Let's talk about the bank accounts first.

7 MR. HILDER: Bank accounts, okay. My colleague,  
8 Eric Rosen, will handle that.

9 THE COURT: All right.

09:47AM 10 MR. FORD: Your Honor, if we may, we'll switch seats.

11 THE COURT: Don't leave though, Mr. Ford. I want to  
12 bring up another topic when we're done with Mr. Hilder.

13 MR. ROSEN: Good morning, Your Honor.

14 It's axiomatic that seizure warrants can only be  
09:47AM 15 issued upon probable cause. Here the affidavit, as we've  
16 recently seen, lacks any semblance of that probable cause  
17 justifying the seizure of \$18 million and five vehicles.

18 THE COURT: Well, let me stop you before you get going.

19 MR. ROSEN: Sure.

09:47AM 20 THE COURT: Tell me what the current status is, because  
21 it's not clear to me, who has got the vehicles, where they are;  
22 who's got the bank accounts, where they are.

23 Tell me where we are right now.

24 MR. ROSEN: Right now, after Your Honor issued the  
09:48AM 25 stay, there were, of course, warrants issued to seize the

1 vehicles. The vehicles now have not been seized.

2 Mr. Rybarczyk has those vehicles.

3 Mr. Rybarczyk does not have the monies in the  
4 Bank of America accounts. Those have been taken. Whether they  
09:48AM 5 are still in the custody of Bank of America or whether they've  
6 been provided to the government, I do not know. Regardless,  
7 they have been seized, whether it's on the government's  
8 instruction or otherwise, they are not in his custody.

9 THE COURT: Anybody from the government? Mr. Carter,  
09:48AM 10 where are the bank accounts?

11 MR. CARTER: Well, Your Honor, the defendant would know  
12 better than the government.

13 Thomas Carter for the government. Thank you.

14 When the Court issued the stay, the banks were  
09:48AM 15 told that the Court had issued a stay. The government does not  
16 have possession of a dime of Mr. Rybarczyk's money.

17 THE COURT: Okay. So we're assuming it's somewhere  
18 within the computer of Bank of America?

19 MR. ROSEN: Right.

20 THE COURT: Go ahead.

21 MR. ROSEN: He has no access to it, Your Honor; and he  
22 hasn't had access to it since before the first hearing we had  
23 on March 13th, when the Bank of America obfuscated and delayed  
24 and eventually after weeks of us trying to figure out what was  
09:49AM 25 going on, finally told us to contact the FBI.

1 But the point we're here now for, Your Honor, is  
2 just simply that we now know there is no probable cause to  
3 seize the bank accounts or the vehicles.

4 The affidavit, which we've attached to our motion  
09:49AM 5 we filed on Monday morning, was entirely conclusory. There's  
6 no factual support at all for the affiant's assertion over and  
7 over again that he earned \$23 million in profits from fraud,  
8 none.

9 Under *Illinois v. Gates*, that is grounds for  
09:49AM 10 quashing or returning the seized funds, however Your Honor  
11 wants to do it, simply based on that.

12 The affidavit says that the \$23 million was  
13 identified, but provides no basis. It says that it was  
14 identified fraud proceeds without explaining how they were  
09:50AM 15 identified or by whom. It claims that the funds were made up  
16 of proceeds earned through participation in fraud; but once  
17 again, that's just conclusory.

18 There are no allegations at all about specific  
19 tickers traded to get up to \$23 million, how the FBI agent  
09:50AM 20 calculated \$23 million in fraud, or what records were reviewed  
21 or what methodology was used to get to \$23 million. There was  
22 absolutely nothing. It's extremely conclusory and wildly  
23 overbroad and for this reason, they must be suppressed, quashed  
24 or the funds returned.

09:50AM 25 There's only a single example actually in the

1 affidavit at all about what he did and what he is alleged to  
2 have done and that's with the ticker SXTG, which the  
3 government, we have traded papers back and forth over that.

4 The important thing to note just off the bat is  
09:51AM 5 this ticker earned Mr. Rybarczyk \$15,000. 15-, and they've  
6 seized the entirety of all his bank accounts.

7 The superseding indictment, which is incorporated  
8 into a warrant by reference, focuses, we believe on basically a  
9 single misleading false tweet by Mr. Deel, which is what the  
09:51AM 10 government alleged was false and misleading.

11 In our brief, we actually showed, in fact, it's  
12 not false and misleading. We provide citations to all of  
13 Mr. Deel's statements and we show that what he was saying was  
14 entirely true.

09:51AM 15 He was telling his followers that SXTG, a thinly  
16 covered stock -- this isn't, you know, Goldman Sachs or  
17 Morgan Stanley. This is a thinly covered stock where people go  
18 through these records, go through filings and then post about  
19 them. This occurs day in and day out all through the  
09:52AM 20 United States and all around the world of people trying to  
21 share ideas and that's all that they were doing and none of  
22 that was false.

23 And they claim Mr. Rybarczyk edited that tweet, I  
24 guess, and that he then purchased the stock and made a  
09:52AM 25 grammatical error as to whether he was adding or had added in

1 the past, even though he had just purchased the stock and had  
2 just told people on Discord that he had added.

3 And, you know, we believe it's some type of  
4 autocorrect malfunction, but basically the government's case,  
09:52AM 5 as we just discussed, boils down to the fact that he tweeted  
6 something about a stock in some respect and then sold shortly  
7 thereafter.

8 And, of course, we incorporate Mr. Ford's  
9 arguments into that; but the point here, we're not just at a  
09:52AM 10 bill of particulars stage, we're at a probable cause stage  
11 showing that that was a falsity, that that was fraud, that what  
12 he did was completely inaccurate and it hinges not on what he  
13 said, but only on what he didn't say. It's an omissions case  
14 solely.

09:53AM 15 And there's no duty alleged that Mr. Rybarczyk,  
16 tweeting not in his own name, in the name Ultra Calls, who  
17 disclaimed all investment advice, had any duty whatsoever to  
18 tell people that he was selling shares in the future. There's  
19 no duty whatsoever.

09:53AM 20 And by the way, this happens day in and day out  
21 in real-life finance. It's called talking the book. Hedge  
22 fund people do this all the time. They go to conferences and  
23 they tell people: Here is one of my investment thesis.  
24 Obviously I have shares in this. And then they do that for a  
09:53AM 25 variety of reasons, to make themselves look good; but a lot of

1 times they sell shortly thereafter.

2 And we know that and we've looked at studies and  
3 that's one of the things we're examining in this case, but we  
4 know that because hedge funds, unlike Twitter people, are  
09:54AM 5 required to disclose their holdings, and I think it's a 13F  
6 filing or something like that, down the lines.

7 You can see that these people have been selling,  
8 and no one raises a peep about this.

9 Mike Novogratz, a huge hedge fund manager,  
09:54AM 10 Galaxy Digital, got a tattoo of a coin called Luna, a security,  
11 a coin called Luna on his arm tweeting incessantly about this,  
12 pumping it up, pumping it up day after day.

13 Well, we know what happened to Luna. It  
14 completely collapsed. The whole thing was a fraud. It went  
09:54AM 15 from a hundred dollars, I think, to zero.

16 What happened to Mr. Novogratz? Well, he had  
17 been selling the entire time, cashing out when things were  
18 good. He went quiet. Nothing has happened to him.

19 This is not unusual. There's no requirement.  
09:54AM 20 There has to be a duty, as Mr. Ford said, a fiduciary or some  
21 type of duty of trust and no court that I am aware of has held  
22 that simply twittering in another person's name to people  
23 disclaiming investment advice establishes that duty.

24 So shifting gears a little bit. Where does the  
09:55AM 25 government get that \$23 million figure for fraud?



1 Well, the judge didn't know because it's not in  
2 the affidavit. And we now know -- the only reason we know is  
3 because the bill of particulars shows 200-plus tickers -- over  
4 200 ticker dates, 200 episodes where Mr. Rybarczyk was pumping  
09:55AM 5 and dumping, I guess, constantly. And we aggregated the  
6 profits from that and we got to \$23 million in fraud --  
7 \$23 million in proceeds, not fraud.

8 The government did not provide that. We went  
9 through it.

09:55AM 10 THE COURT: I'll give you a general denial.

11 MR. ROSEN: Sorry? Yeah.

12 But what we do know about that \$23 million  
13 figure, they basically took the position that every tweet that  
14 he ever sent was false and misleading if it wasn't accompanied  
09:56AM 15 by some "I'm selling shares now or in the future" or something  
16 like that.

17 And we attach to our motion even less specific  
18 allegations regarding a number of different tickers that the  
19 government believes he gained a lot of money through fraud --  
09:56AM 20 ABVC for example, a 2-million-dollar pump-and-dump.

21 And we showed three tweets of market commentary  
22 saying basically: Look at it go. Commenting like any person  
23 has a First Amendment right to do in the United States. And  
24 apparently that was fraudulent and misleading.

09:56AM 25 AHPI, \$365,000 in fraud alleged. He tweeted only

1 that it was a mask play referring to a company that makes masks  
2 during COVID, which it did.

3 Over and over again, we attach the exhibits; we  
4 attach the tweets. \$400,000 for REDU, when he wrote: I'm  
09:57AM 5 hammering REDU," and he was. He bought a lot of shares of REDU  
6 at that time.

7 And what does the government respond with? They  
8 don't even deal with that. They don't try to justify why that  
9 is somehow this massive fraud scheme. People contributing on  
09:57AM 10 Twitter in discourse, just like they're allowed to do. So we  
11 know that the government's figure is incorrect. They've  
12 essentially conceded it, and it's not accurate.

13 They don't try to defend the \$23 million in their  
14 brief. They walk away from it. They abandon it.

09:57AM 15 Their argument shifts. They say this guy made a  
16 lot of money. He made \$50 million.

17 He's not a drug dealer. He's a trader. He has a  
18 legitimate source of income. Even the government concedes  
19 that. More than half of the funds, they don't even say are  
09:57AM 20 illegitimate or fraud proceeds. Out of the  
21 49-point-whatever-million-dollars, they're saying it's only 23.

22 So they concede that he was a good trader, and he  
23 was. He was terrific at it.

24 They shove the burden on us. They write: "It's  
09:58AM 25 farfetched to argue that earning \$23 million in two years is

1 not pervasive and persistent fraud."

2 Judge, it's the government's burden to show  
3 probable cause as to why the funds are fraudulent. We don't  
4 have to fight our way out of it. It's their burden, and they  
09:58AM 5 have to do that.

6 They argue that if he gains \$50,000 or something  
7 in fraud and uses that legitimately, that whole million that he  
8 gained is now fraudulent proceeds, but that's not even their  
9 theory. Their theory is that everything was comingled  
09:58AM 10 together, and you can't tell what was fraud and what wasn't.

11 So we know there was no probable cause issued in  
12 the affidavit and there was no probable cause in the  
13 superseding indictment, which, again, only talks about  
14 specifically as to Mr. Rybarczyk, about \$250,000 in fraud.

09:59AM 15 And because of that, their civil forfeiture  
16 theory under (a)(1)(C) fails and they have no civil forfeiture  
17 under money laundering because there are no proceeds of the SUA  
18 that they've specifically identified.

19 And they certainly haven't identified any conduct  
09:59AM 20 in their affidavit where Mr. Rybarczyk hid money. All the  
21 accounts were in his own name. There was no concealment and  
22 certainly when there's no promotional money laundering, he took  
23 that money out of the market actually and put it in a bank  
24 account.

09:59AM 25 And under 1957, the spending statute, they have

1 no allegations that he knew that these were fraudulent proceeds  
2 and they have no allegations of specific trades or wires or  
3 anything that were more than 10,000 dollars' worth. So they  
4 have two fails.

10:00AM

5 And they tried to then say, "Well, we haven't  
6 traced the money."

7 But we don't need to now because under 984 --

8 18 USC 984 -- there's this one-year rule where money is

9 fungible and so we can seize the amount regardless. But,

10:00AM

10 again, that only applies if they file a civil asset forfeiture  
11 complaint within the one year; and here they have not. That's  
12 undisputed. And so they can't rely on that one year. They  
13 have to trace the proceeds, and they haven't done so.

14 So at best what are we looking at, Your Honor?

10:00AM

15 We're looking at \$18 million that was seized. 46 percent is  
16 alleged to be fraudulent. That's what the -- the government's  
17 numbers, accepting everything that they did, that they say  
18 46 percent is alleged to be --

19 THE COURT: Let's back up. How are you getting

10:00AM

20 18 million?

21 MR. ROSEN: Well, 18 million, that's the amount seized  
22 or held by Bank of America that he doesn't have access to.

23 THE COURT: The three accounts?

24 MR. ROSEN: The three accounts.

10:01AM

25 THE COURT: I didn't get any statements for the last

1 six to nine months in any of these.

2 MR. ROSEN: I don't know that we're able to get the  
3 statements from those now that they've been seized. I don't  
4 know if we have the ability to print out the statements.

10:01AM 5 THE COURT: Okay. Because they quit like in June  
6 of '22.

7 MR. ROSEN: Right. His trading effectively, as the  
8 government alleges in their affidavit, effectively ended.  
9 We're happy to provide -- to the extent we can get them, we're  
10:01AM 10 happy to provide any additional statements that we have; but  
11 effectively it's sort of a status quo from June onwards.

12 THE COURT: Okay. But we're still talking about these  
13 three accounts?

14 MR. ROSEN: Three accounts, \$18 million seized. They  
10:01AM 15 allege 23 million in fraud out of 50 million. That is about  
16 46 percent of the total proceeds were fraud proceeds; so  
17 46 percent of 18 million, which is based on the theory that  
18 things are comingled together, is 8.4 million.

19 So even accepting, Your Honor, everything that  
10:02AM 20 they say, which of course we do not, 8.4 million is all they  
21 were allowed to take out of the bank accounts.

22 I would like to briefly address the Franks  
23 hearing arguments because we have moved for a Franks hearing.  
24 The government takes issue on two grounds with the Franks  
10:02AM 25 hearing. One, the materiality; and, one, intent. They don't

1 say we've alleged a reckless disregard for the truth.

2 Materiality -- and we've talked -- we've cited in  
3 our brief a couple of times the Mokbel case before  
4 Chief Judge Rosenthal. We've taken issue and we've provided  
10:02AM 5 evidence, the entirety of how they calculated and came to  
6 profits. We literally attached the tweets that show that they  
7 weren't fraudulent proceeds and the government did not even  
8 contest that.

9 By that definition alone, what we've alleged is  
10:03AM 10 clearly material to the magistrate judge's determination that  
11 \$23 million wasn't fraud. To me, that's a -- you know, sort  
12 of, you know, an easy one, as Mr. Armstrong alleges.

13 The reckless disregard for the truth also we've  
14 clearly shown. Again, we have no allegations as to what the  
10:03AM 15 agent reviewed; no allegations as to what he relied upon;  
16 conclusory statements throughout the entirety that this is  
17 \$23 million in fraud; and we've shown that the major tickers  
18 they're relying upon to get to that 23-million-dollar mark were  
19 not fraudulent proceeds. We attached those tweets, and the  
10:03AM 20 government does not dispute them.

21 And just like in Mokbel, the inaccurate  
22 characterization of prime evidence that they used to get to the  
23 proceeds figure clearly demonstrates a reckless disregard for  
24 the truth of what those tweets actually meant.

10:04AM 25 And, Judge, we also finally take issue with

1 whether we have to go by what they call the Jones-Farmer rule  
2 versus whether we can use Rule 41(g) to get the funds back.  
3 And I'll just briefly address this and I'll wrap up and  
4 obviously answer any questions Your Honor can ask me.

10:04AM

5 The Jones-Farmer rule simply sets a floor. If  
6 you can show that you need the money for your lawyer and you  
7 can show that there's something wrong with PC, you're  
8 automatically entitled to a hearing. It doesn't say that's the  
9 only method that you can use.

10:04AM

10 You can also use Rule 41(g), as again Chief  
11 Judge Rosenthal addressed that very issue. If you can show  
12 that your property was unlawfully seized, which is what we've  
13 done here, we're entitled to it back; and that's all we're  
14 asking for.

10:05AM

15 The property is not alleged in an indictment.  
16 There's no civil asset forfeiture complaint that we can fight.  
17 We have no remedy other than to seek relief before this Court  
18 and demand it back under Rule 41(g). That's all we've got;  
19 and, therefore, we're entitled to rely on that rule because it  
20 would be unjust based on the facts that we've shown to keep the  
21 money in the government's hands.

10:05AM

22 Thank you.

23 THE COURT: Mr. Carter, who wants to weigh in from your  
24 side?

10:05AM

25 MR. CARTER: I will, Your Honor. Thank you.

1           Your Honor, a couple of things before we get into  
2     the heart of it. First of all, I think that the defense and  
3     government agree on at least one thing, which is that probable  
4     cause has been found in this case; and let's put a pin in that,  
5     because we will return to that, as a marker of how the Court  
6     should proceed in the available remedies to this defendant.

7           Secondly I'll be honest. I didn't follow the  
8     story about the tattoo all that well, but those type of  
9     arguments in which -- well, first of all, much of what you  
10    heard was jury argument. Those are arguments for a jury in  
11    October and in much the same way that Mr. Ford argued that  
12    specific ticker symbols were or were not fraudulent or valid in  
13    some way, you just heard a repeat of that argument.

14           And for the same reasons it fails under the same  
15    analysis because those are arguments for a jury later. They do  
16    not implicate what's going on here, which is a probable cause  
17    seizure warrant.

18           And before we get into that, let's just  
19    acknowledge, everybody in the courtroom, that we are in the  
20    presence of greatness, Judge. This defendant, Mr. Rybarczyk,  
21    took \$50,000; and in three years, he turned it into 49 million.  
22    That makes him either the greatest trader in the history of  
23    mankind since the inception of financial markets or he's  
24    involved in a massive and pervasive fraud as alleged in the  
25    indictment.



1 Now, Judge, let's talk about the seizure  
2 warrants, which, as we would all agree, have not actually been  
3 executed because the government does not have the money to  
4 return; but under the theory that if you were to release the  
5 stay that they would be, we can proceed.

6 Now the defense wants to the proceed under 41(g).  
7 Unfortunately that is not the correct avenue. The defendant  
8 has an avenue for remedy. Absolutely. Once an indictment --  
9 or once a seizure warrant has been found and issued through  
10 probable cause -- and in this case by a magistrate judge -- the  
11 remedy in this case is a Jones-Farmer hearing and that's fine  
12 if we get to that point. There are certain thresholds that the  
13 defense must meet.

14 Now, to challenge those seized funds, they've  
15 asked the Court to take an equitable remedy under 41(g). 41(g)  
16 is primarily used for assets seized pre-indictment. That is  
17 not the case here, Judge.

18 This defendant has been on notice since December  
19 that all of his assets that are traceable to forfeitable funds  
20 are on the block. It is included in both of the indictments.  
21 So there's no issue of notice here. 41(g) is an equitable  
22 remedy, which the Court can apply post-indictment, but the law  
23 asks the Court to take notice of and use the available remedies  
24 as it's been established by case law, which in this district is  
25 Jones-Farmer.

1           A Jones-Farmer hearing could be applicable in  
2       this case or not; but that is the absolute remedy for a seizure  
3       warrant in which the defense is explicitly saying, "Well, these  
4       are not seizable. They are untainted funds."

10:09AM

5           Well, when we have a dispute about what is and is  
6       not tainted funds, as in what is the proceeds of fraud, the  
7       remedy for that is a Jones-Farmer hearing.

10:09AM

8           Now, the defense wants to circumnavigate that  
9       through 41(g), and I understand that. I get that. But once  
10      you have a finding of probable cause, which we have in this  
11      case, then you have to make -- if you want to avoid a  
12      Jones-Farmer hearing, you have to make the 41(g) argument,  
13      which should fail, because it's simply an equitable argument  
14      and there's really no case law and it's not the preferred  
15      method of determining what is and is not tainted funds, which  
16      is the issue in this case.

10:09AM

17           Fortunately the defense also makes a Franks  
18      motion, but at no point do they allege reckless conduct. At no  
19      point do they allege intentional misleading of the magistrate  
20      judge.

10:10AM

21           What they're alleging is insufficiency. Well, it  
22      wasn't insufficient for the magistrate judge who found it.  
23      They go on and on about how there's no ticker symbols that are  
24      included that would support such a finding; and then they  
25      circle back around and say, "Well, STX, obviously that was

10:10AM

1 included."

2 But we have to knock that out through this long  
3 analysis. We've replied and counter-replied.

10:10AM

4 The point is the Court does not need to get there  
5 as to sort out what ticker symbols may or may not lead to  
6 fraudulently obtained and, therefore, forfeitable funds,  
7 because that is reserved for a Jones-Farmer hearing or for a  
8 judge and jury at the end of the case trial. Those are all  
9 questions that can go to a judge or a jury at the end of the  
10 trial, assuming that there is a conviction.

10:10AM

11 So, Your Honor, ultimately what we're left with  
12 is the defendants trying to circumnavigate a validly issued  
13 seizure warrant for funds that come from frankly an incredible  
14 source -- and I use that in a literal term, not credible -- and  
15 pick and choose which ticker symbols they would like to apply  
16 and which they would not.

10:11AM

17 The Court does not need to engage in that. By  
18 applying the actual law here, if the defense wants to make that  
19 argument, they need to make it through a Jones-Farmer hearing  
20 should they meet the required threshold.

10:11AM

21 Thank you, Your Honor.

22 THE COURT: Let me ask you a couple of questions,  
23 Mr. Carter.

24 I've looked at three Bank of America accounts and  
25 I don't want to necessarily go into specifics because it's a

10:11AM

1 public hearing and I don't think we need to. But one looks  
2 like a savings account of some sort, one looks like a checking  
3 account of some sort and one is a trust.

4 The government in your reply makes reference to a  
5 "trading account." What do you mean when you say that?

10:12AM

6 MR. CARTER: Your Honor, if you'll look at the  
7 affidavit, which I have another copy of it if you'd like --

8 THE COURT: Just tell me what's in it.

9 MR. CARTER: Essentially those three bank accounts  
10 you've referenced, the three bank accounts at BOA that are at  
11 issue here, were all funded from the same E\*TRADE trading  
12 account. That is the account that the original \$50,000 went  
13 into and through which the 49 million flows.

10:12AM

14 THE COURT: Okay. But that account is not at issue, is  
15 it?

10:12AM

16 MR. CARTER: As far as we -- that account is not at  
17 issue --

18 THE COURT: Okay.

19 MR. CARTER: -- to answer your question, yes.

10:12AM

20 THE COURT: That's what I was trying to figure out, if  
21 there was a fourth account that I didn't know anything about.

22 MR. ROSEN: No, there isn't, Your Honor.

23 If I could just briefly respond to two very quick  
24 points.

10:13AM

25 THE COURT: Yes.

1 MR. ROSEN: One, the idea that Jones-Farmer is the  
2 exclusive remedy is firmly rebutted by Judge Rosenthal just two  
3 years ago in this very courthouse in Mokbel in a  
4 post-indictment seizure warrant analysis in which she firmly  
5 held that Rule 41(g) can be used to get the funds back.  
6 There's nothing special about Jones-Farmer that makes it simply  
7 the only avenue for, you know -- for retreat.

8 The other point about reckless disregard for the  
9 truth, the agent, specifically averred, Paragraph 34 of the  
10 affidavit, that there were specific trades that they have  
11 identified which added up to the fraud figure. Now the  
12 government is saying in their opposition that actually that  
13 didn't happen. They don't need to go through specifics.

14 And, two, we've identified at least five or six  
15 tickers that are uncontested that shows that that actually  
16 isn't true. So based on that alone, there is certainly a  
17 reckless disregard for the truth.

18 THE COURT: Okay. Let me tell both sides I'm less  
19 concerned about the vehicle that gets it here than I am about  
20 the actual merits of whether something should be seized or not.  
21 And I know both sides realize that the vehicle may influence  
22 the burden of proof or what somebody has to show or that type  
23 of thing.

24 But I guess, Mr. Rosen, I understand your client  
25 says, "Look. It's my money, I made it. I don't want the

1 government to have it."

2 That's clearly the case from your standpoint, I  
3 would think. But what does it matter if the account is frozen  
4 as opposed to the government having it, for instance, in the  
10:15AM 5 trust account, which I assume is a trust that he can't or  
6 shouldn't invade?

7 MR. ROSEN: It's also frozen, Your Honor. It was a  
8 pretrial services condition that he can't spend more than  
9 \$5,000 from those funds without pre-approval, and there's no  
10:15AM 10 allegations that he has violated that.

11 THE COURT: Okay. And, Mr. Carter, if that's the case,  
12 why does the government need to seize it?

13 MR. CARTER: Your Honor, the government would like for  
14 the victims in this case to have a pool of money at the end of  
10:15AM 15 the case. There are extensive victims. We would worry about  
16 depreciation. We would worry about continued trading activity,  
17 frankly, that would depreciate that. If the Court --

18 THE COURT: I don't know. If we're in the presence of  
19 greatness, no telling what 15 million could become.

10:16AM 20 MR. CARTER: Oh, I agree, Judge. I agree.

21 And to be fair, some of the other defendants have  
22 had significant reversals in fortune now that the trading has  
23 tapered off. Or the conspiracy at least. So we would like to  
24 avoid that as well.

10:16AM 25 Your Honor, the vehicle is the same. The

1 government should seize it. It will go, as I understand, to  
2 the U.S. Marshals and be held in trust. One way or the other,  
3 he wouldn't have access to it until the case is done; and  
4 that's frankly what the law provides.

10:16AM

5 THE COURT: All right. I'm granting the defendant's  
6 motion as to the accounts ending in 6719 and 3511. I'm  
7 freezing the account -- and I'll enter an order to this  
8 effect -- that ends in 1461.

10:17AM

9 And in that regard, Mr. Carter, it preserves the  
10 largest assets should the defendant be found guilty and should  
11 the victims have suffered, while it allows the defendant to,  
12 one, live his life; and, two, pay his lawyers, but under the  
13 same terms and conditions that it's been under with the  
14 5,000-dollar limit and getting permission.

10:18AM

15 So that's my ruling as to Mr. Rybarczyk's three  
16 accounts. And I'm also allowing him to keep the possession of  
17 the automobiles in question with the same limitation that he  
18 can't dispose of them because at least the ones I've looked at  
19 through the accounts I've looked at are all well in excess of  
20 \$5,000. He can't dispose of them without the Court's  
21 permission.

10:18AM

22 MR. CARTER: Your Honor, just to clarify, because the  
23 Court and obviously the government did not receive the full  
24 bank account records, it's hard for us to understand exactly  
25 what is in those accounts at this point. I'm sure the defense

10:18AM

1 will rectify that immediately; but in terms of freezing the  
2 account of 1461, when you say, "freeze it" --

3 THE COURT: I'm going to leave -- I'm going to enter an  
4 order telling Bank of America that they have to hold it.

5 MR. CARTER: Okay.

6 THE COURT: It's not going to be in your possession,  
7 but it's not going to be accessible by the defendant.

8 MR. CARTER: Thank you, Your Honor.

9 MR. ROSEN: I can represent that the records we  
10 provided this Court were taken from the government's discovery.

11 THE COURT: Okay. All right. Those are the motions  
12 that I had scheduled.

13 The government has proposed a scheduling order.  
14 It's opposed. And I'll be frank. I know we've gotten some  
15 written oppositions from some of the defendants that I have not  
16 seen yet, but Rhonda tells me they've been filed.

17 Let me ask and it's not -- I'm not just limiting  
18 it to Mr. Constantinescu's and Mr. Rybarczyk's lawyers, because  
19 if we have any other lawyers from the other of the defendants  
20 here in the courtroom, what's the main problem that you have  
21 with the government's proposal?

22 MR. FORD: Your Honor, if I may -- and I understand  
23 that we've been set for trial in October. As it stands, were  
24 slated to get a substantial amount of information on June 5th,  
25 so this summer. It is a very truncated period of time to try



1 to prepare for this case. As a practical matter, given the  
2 number of defendants, the novelty of the charges and the  
3 complexity, I don't think as a practical matter any of us could  
4 possibly be adequately prepared.

10:20AM 5 Right now what we're looking at, as I said,  
6 they've alleged 402 separate purported pump-and-dump schemes.  
7 It's going to require us to sift through and understand trading  
8 records, communications from various sources regarding each of  
9 those 402 instances. That is a heavy lift. So I just don't  
10:21AM 10 see it as being practical in that time period to be able to do  
11 that.

12 THE COURT: How do I resolve your concern, counsel,  
13 Mr. Ford, with other defendants' concerns saying, "I want a  
14 speedy trial. I want to go to trial right now"?

10:21AM 15 I mean, because the conspiracy count, I mean, I  
16 don't see any practical way of not trying that altogether. I  
17 mean, it just doesn't make any sense either for judicial  
18 economy or for either presentation of the case. It just  
19 doesn't. So I think there's going to have to be -- I don't see  
10:22AM 20 any way in the world that I could sever anyone from this.

21 MR. FORD: Your Honor, I tend to agree on that. You've  
22 previously designated the case as complex; and while I don't  
23 want to have an adversarial relationship with any of my joint  
24 defense counsel here on this issue, as a practical matter we  
10:22AM 25 have to look at the totality of the case, the number of the

1 defendants, the nature of the charges, the determination that  
2 it has been designated a complex case. I just don't think that  
3 October is a practical time to do it.

4 As to whether or not there is a speedy trial  
10:22AM 5 violation, I certainly don't have authority to talk on behalf  
6 of another client or another attorney's client; but with  
7 regards to my client, we don't think it's applicable, one,  
8 because we've waived and, two, because we're a case that's  
9 designated as complex, it permits a carve-out for the Court to  
10:23AM 10 schedule the trial at a later date to prepare -- all parties to  
11 prepare adequately for the trial.

12 THE COURT: Let me ask you since you brought it up  
13 earlier, Mr. Ford. I mean, essentially what you were arguing  
14 before was a motion for summary judgment, you know, if I can  
10:23AM 15 put it into civil terms, basically that -- or a motion to  
16 dismiss, a 12(b)(6) motion saying they don't have a cause of  
17 action, you know, what we did -- let's assume everything they  
18 said was true. They still lose, "they" being the government.  
19 What do you feel is the best way to tee up that issue?

10:23AM 20 MR. FORD: Well, through a motion to dismiss, as you  
21 mentioned. I will say in all candor, as I understand, that  
22 argument will only apply to a 1348 securities fraud claim and  
23 not the 1349 conspiracy charge.

24 THE COURT: Right.

10:24AM 25 MR. FORD: But I will preview for the Court that I take

1 issue with that charge as well.

2 But with regards to this issue of really just not  
3 understanding when a client can sell after having made a  
4 positive statement about a stock, that, I think, is teed up. I  
10:24AM 5 think it's applicable; and I think we're dealing with a very  
6 serious restriction, like I said, on the liberty to participate  
7 in free-market transactions. That goes above and beyond what  
8 the securities laws, as opposed to insiders -- I do think the  
9 issue is a very real and live issue and it's something we've  
10:24AM 10 been investigating very deeply and we're prepared to move  
11 quickly on this issue before the Court.

12 So that's our position on it, Your Honor.

13 THE COURT: Mr. Hilder, do you want to weigh in?

14 MR. HILDER: Yes, Judge.

10:25AM 15 We would concur with Mr. Ford; but I think what  
16 may be realistic here is to amend the scheduling order to also  
17 include dispositive motions filed by a date particular. But  
18 I'm thinking that that would be sometime in the fall because  
19 once the government discloses who their experts are, we're  
10:25AM 20 going to need to retain experts, the experts are going to have  
21 to understand certain things and also communicate to us some of  
22 the theories that would lend itself to dispositive motions.

23 And truth be known, unless my counting is -- and  
24 my mathematics is in error, I think there's only one  
10:25AM 25 codefendant that hasn't waived speedy trial or won't waive

1 speedy trial at this point, I suspect; but I think everybody  
2 else is in concurrence that we do need time.

3 This is a sophisticated case; and if we have  
4 dispositive motions sometime in the fall, then I would assume  
10:25AM 5 that we would have trial into the beginning part of next year  
6 or thereabouts.

7 THE COURT: What's the government's feeling?

8 MR. ARMSTRONG: Your Honor, I'm not going to put words  
9 in Your Honor's mouth; but I thought Your Honor was fairly  
10:26AM 10 clear at our last motions hearing that the October trial date  
11 was pretty firm.

12 THE COURT: Well, and a lot of that I'm basing on the  
13 fact that we did have one defendant -- and I'm sorry. As I'm  
14 sitting here --

10:26AM 15 MS. CORDOVA: I'm counsel for that defendant,  
16 Your Honor. Laura Cordova.

17 Mr. Hennessey did not waive the speedy trial. I  
18 don't want to interrupt, but I'm happy to --

19 THE COURT: No, no. That's why I wanted to bring this  
10:26AM 20 up with y'all present.

21 MR. ARMSTRONG: And so, Your Honor, a few points.

22 Number 1, we took Your Honor's words to heart and  
23 we gave A-Plus work in our March 31st disclosure and we will  
24 continue doing that A-Plus work on the June 5th disclosure that  
10:26AM 25 all parties agreed to, except for Mr. Deel's counsel, who

1 wasn't here, that that was an acceptable date and we are  
2 meeting every single discovery milestone in this case.

3 And what we don't think should be fair to have  
4 happen is for us to put everything aside to do just that and  
10:27AM 5 then have the trial date pulled out from underneath us when the  
6 defendants then have the benefit of all of our A-Plus  
7 disclosures for however many months until this trial gets  
8 reset.

9 The difficulty as well is that if we reset this  
10:27AM 10 trial, there are, of course, eight defense attorneys in this  
11 case and finding a new date will probably be equally as  
12 difficult.

13 THE COURT: I'm not -- I want to make this schedule  
14 work if I can do it; but I'm cognizant of what Mr. Ford just  
10:27AM 15 said, too.

16 MR. ARMSTRONG: And, Your Honor, if I may. The  
17 dispositive motion issue, a motion to dismiss an indictment, as  
18 Your Honor knows, is an incredibly uphill battle and there is  
19 no summary judgment procedure under the criminal rules. That's  
10:27AM 20 what trial is for, and so to argue that they need discovery to  
21 then have a summary judgment procedure on the indictment is  
22 just nonsensical.

23 THE COURT: No, and I wasn't -- I was using that just  
24 as an analogy, a reference.

10:28AM 25 MR. ARMSTRONG: Of course.

1 THE COURT: But essentially what Mr. Ford was arguing  
2 was when it's all said and done, this ain't a crime.

3 MR. ARMSTRONG: We obviously disagree with that.

4 THE COURT: I know you disagree and in some instances  
10:28AM 5 some judges would say, "Well, let's just try the case and if I  
6 believe that, I'll just set aside the verdict."

7 MR. ARMSTRONG: Right.

8 THE COURT: But this seems like an important issue to  
9 at least establish before we get that far.

10:28AM 10 MR. ARMSTRONG: I think Your Honor hit the nail on the  
11 head. This case is not complicated in the sense of the theory.  
12 It's a scheme to defraud that's modeled off the wire fraud  
13 statutes that have been on the books since before I was even  
14 born; and a scheme to defraud is evident in this case where, as  
10:29AM 15 Your Honor said, you say one thing and you do the opposite.  
16 That involves false statements and an obvious intent to  
17 defraud. So in some respect, the factual issues are actually  
18 not that complicated notwithstanding the voluminous discovery.

19 THE COURT: All right. Ms. Cordova, you want to weigh  
10:29AM 20 in?

21 MS. CORDOVA: Yes, Your Honor. Thank you very much.

22 I'm Laura Cordova on behalf of Mitchell  
23 Hennessey. We filed a response, which is actually not in  
24 opposition to the government's motion for a scheduling order.  
10:29AM 25 We don't oppose the schedule. We obviously wanted to go

1       sooner; but with the October date, we're willing to stick to  
2       that. We do not want a continuance and our motion was joined  
3       by Mr. Matlock and Mr. Deel, so three defendants joined this  
4       motion.

10:29AM

5               Our objection, our request from the government,  
6       is that they provide the factual detail underlying what we  
7       think are the core factual allegations in this case that are  
8       the basis of our motion to dismiss.

10:30AM

9               For example, RGLS is one of the companies at  
10       issue. They have provided no allegations other than the broad  
11       allegations that Mr. Armstrong has articulated. They haven't  
12       said which type of false statements occurred with respect to  
13       RGLS.

10:30AM

14              For a motion to dismiss, that's important, we  
15       think, because there is a difference in the law between a  
16       statement of opinion and what is required to prove that that  
17       was false, which would be what Mr. Ford was talking about  
18       earlier, "What I think is going to happen with the stock" as  
19       opposed to a statement of fact. There's a different standard  
20       there.

10:30AM

21              THE COURT: Let me ask you this, and let's assume for  
22       argument that I agree that there is a distinction between  
23       those. If I have a zillion followers on Twitter and I say,  
24       "Man, this is the greatest thing since sliced bread," that's a  
25       statement I would think of opinion, but at the same time I'm

10:30AM

1 saying that, I'm dumping my shares, is that actionable?

2 MS. CORDOVA: Your Honor, I believe it would be in  
3 certain circumstances, but the bar understandably is much  
4 higher and I don't want to speak ahead of having fully briefed  
10:31AM 5 this; but my understanding generally speaking is that you have  
6 to prove both objective and subjective falsity in those  
7 instances, both that it is not as great as sliced bread and  
8 that you did not believe it was as great as sliced bread at the  
9 time.

10:31AM 10 THE COURT: And both of those sound like jury issues to  
11 me.

12 MR. ARMSTRONG: Materiality.

13 MS. CORDOVA: Well, but it goes to whether a statement  
14 can ever be false as well. Some statements, obviously under  
10:31AM 15 the First Amendment, are protected speech. And that is another  
16 issue that if they don't tell us what the statements are that  
17 we have to defend against, then we don't know what is -- so,  
18 for example, satire. Satire is protected First Amendment  
19 speech. If they're saying something satirical, if it's a  
10:32AM 20 satirical account -- I'm not saying that necessarily applies.  
21 Like I said, I don't want to get too far ahead of our briefed  
22 arguments.

23 THE COURT: Well, let me back up. Mr. Ford showed me a  
24 spreadsheet earlier today that basically tied each defendant to  
10:32AM 25 each stock. Tell me why that's not enough for you to get



1       there.

2               MS. CORDOVA: So because a few reasons, and we have  
3       our -- I don't know if you saw our response, but it does lay  
4       out why we --

10:32AM

5               THE COURT: No, I haven't. That's why I led this off  
6       that I haven't had a chance to look at any of the responses;  
7       but since I had y'all here, I wanted to talk about it.

10:32AM

8               MS. CORDOVA: So there's a couple of reasons. First of  
9       all, they're just saying that they're going to produce this in  
10       June. So they're acknowledging that they're going to produce  
11       the false statements. We're saying produce them now. You  
12       presented them to the grand jury, you have them, produce them.  
13       Let us know what they are so we can start digging in.

10:32AM

14               Because I will tell you, Your Honor, from my  
15       perspective, I personally spent several days digging through  
16       evidence for one stock compiling because it's not just -- and  
17       they made that clear earlier today. It's not just what my  
18       client said. I can go through and say there's nothing here.  
19       I've got to look at everybody else.

10:33AM

20               And not only that, they've charged -- they've  
21       alleged with their unindicted co-conspirators, who they refuse  
22       to identify for us so I don't even know. Is this guy who said  
23       something about it, do I need to worry about what he said? I  
24       don't know.

10:33AM

25               And so until they tell us, these are the false

1 statements. This is what you have to defend against and then  
2 we can get ready. And we will get ready. Even if they don't  
3 do that, we're going to be ready.

4 THE COURT: Is that going be part of the June  
10:33AM 5 disclosure, Mr. Armstrong?

6 MR. ARMSTRONG: Which part, Your Honor?

7 THE COURT: "These are the statements we think are  
8 false."

9 MR. ARMSTRONG: Absolutely.

10:33AM 10 THE COURT: Is there a way you can make that kind of a  
11 flowing discovery? When you have the statements organized, you  
12 can release them as soon as you can because I think Ms. Cordova  
13 is right, especially with regard to the conspiracy count.  
14 You've got to not only worry about your own statements, you've  
10:33AM 15 got to worry about the other statements.

16 MR. ARMSTRONG: Your Honor, the problem with flowing  
17 discovery is that it's always used against you.

18 THE COURT: Of course it is. That's why you have it.

19 MR. ARMSTRONG: Especially in a trial like this where  
10:34AM 20 you have eight defense attorneys and, what, 50 attorneys on the  
21 other side.

22 And so we want to be thorough and we want to get  
23 it right and we want to make sure, as Mr. Williams alluded to  
24 in our last hearing, that we don't miss something and then we  
10:34AM 25 have to include it or supplement our disclosures. So we want

1 to have the final set, the trial-ready set on June 5th, which  
2 we will.

3 THE COURT: And how -- give me a ballpark. How many --  
4 let's say with one stock, just pick one out of the -- how many  
5 statements are we talking about?

10:34AM

6 MR. ARMSTRONG: The false statements? False and  
7 misleading statements?

8 THE COURT: Yeah. 15 or 20 per stock?

9 MR. ARMSTRONG: I would say just back of the envelope  
10 probably more than 1500.

10:34AM

11 THE COURT: Really?

12 MR. ARMSTRONG: Yeah. But, Your Honor, those are all  
13 tied to the specific tickers and the specific date range, some  
14 of which are one or two days and so it's very easy to figure  
15 out what the relevant statements are and what the relevant  
16 trading records are based on our March 31st disclosure.

10:35AM

17 THE COURT: Okay.

18 MS. CORDOVA: Your Honor, I would just say I've done  
19 that with respect to one stock; and it is not clear. I have a  
20 stock of documents this big with all the Twitter statements,  
21 all the Discord statements, the trading.

10:35AM

22 I don't know what I've got to defend at trial. I  
23 mean, I can sit there and I can guess, like, maybe this is it.  
24 Maybe this is it. My client looks clean, but what do I know  
25 until they tell me what they think he said was false because

10:35AM

1 they might get it wrong. That just happens. They may think  
2 something was false and we can prove as a matter of fact it was  
3 not and we need to know that.

4 THE COURT: I think that's inherent in this case. I  
10:35AM 5 mean, and that's going to be for the jury to decide, quite  
6 frankly, what was false and what's not.

7 All right. I'm going to leave the June 5th  
8 deadline where it is.

9 Mr. Armstrong, if you get done earlier, I'd like  
10:36AM 10 you to get it to the defendants as soon as possible.

11 I'm going to look at this schedule. Right now  
12 I'm leaving the October trial date where it is.

13 And Mr. Ford, that may mean some late nights for  
14 you; but I'm still leaving it where it is.

10:36AM 15 I'll play with these various deadlines. I'm a  
16 little worried, for instance; and I understand the reason for  
17 it, but if any of the other defense lawyers in here want to  
18 weigh in on this proposed scheduling order, get me something or  
19 tell me right now.

10:36AM 20 MR. LEWIS: If I may, Your Honor. Chip Lewis for  
21 Mr. Cooperman.

22 With deference to the government's yeoman-like  
23 work in production, our team is a little bit behind the curve  
24 because of my own personal schedule that had 21 months of the  
10:37AM 25 last 30 in trial between Durst and the death penalty case I

1 just finished.

2 I've got 22 trials set between now and October  
3 the 28th. We will work very, very hard to get up to speed; but  
4 I don't want Mr. Hilder to feel like the Lone Ranger. And I  
10:37AM 5 will supply the Court in writing a little bit more color of the  
6 schedule.

7 With the respect that I have particularly for  
8 this Court, I don't want to tell the Court in September, "I'm  
9 going to be in trial again, Your Honor, and not available in  
10:37AM 10 October."

11 So I will lay it out for the Court; but I do  
12 believe, as Mr. Hilder's position for his client, there are  
13 other of us defendants -- and Mr. Ford put it very well -- that  
14 quite frankly do not, given our experience, believe we are  
10:37AM 15 going to have done the duty our clients have hired us to do  
16 with that trial date.

17 And like I said, I'll put it in writing so  
18 His Honor has an opportunity to study it; but I didn't want  
19 this opportunity to pass and His Honor to say, "Well,  
10:38AM 20 Mr. Lewis, why did you just sit there looking pretty and not  
21 speak up?"

22 Thank you, Your Honor.

23 MR. REYES: Your Honor, Luis Reyes for Mr. Matlock.

24 Just to weigh in on the record and to clarify our  
10:38AM 25 position with regards to the trial date as set, as Mr. Hilder

1 has said, we do believe, especially from what we've heard today  
2 in court, that this is headed towards a dispositive motion.

3 What we don't believe is we can do that  
4 adequately, especially with a June 5th deadline for the  
5 statements and what other.

6 But we'd just like to say on the record that  
7 Matlock opposes the schedule. We do believe there's a motion  
8 to dismiss that will be valuable for this Court, that will  
9 allow for judicial efficiency, and then can set a path forward  
10 from there. But as we see it right now, we do believe we need  
11 time to do that and do it thoroughly.

12 THE COURT: Help me here, counsel. I don't see this  
13 motion. I think it's important, if nothing else -- and I know  
14 y'all don't want to go through the motions just to educate the  
15 Court; but quite frankly, that's always helpful.

16 But I don't see this as being fact-based at all.  
17 I mean, I think this is a -- we're going to assume everything  
18 the government has alleged is true; but even so, you got  
19 nothing. I mean, that's kind of the way I heard Mr. Ford's  
20 argument was, you know, everything they said, you know, okay  
21 they opined on something. They bought the stock, they sold the  
22 stock. Everything they did was basically legal.

23 I mean, that's what I'm hearing and obviously  
24 that was a simplistic rendition of it so I don't think -- I see  
25 this as being two different tracks. I see the discovery as

1 being the really important track because y'all need to get the  
2 information and be able to evaluate it, but I see this other --  
3 so I'm going to probably dual-track this because I'm going to  
4 look at, okay, I want to see the legal issue, you know,  
10:40AM 5 probably by June to say, okay -- and I'm probably going to  
6 order, like, if you've got a motion to dismiss -- and I know  
7 there's one I haven't ruled on, on the money laundering  
8 thing -- and I'll treat it kind of like a summary-judgment-type  
9 schedule in that I will get y'all to file your motions to  
10:40AM 10 dismiss, get the government to respond, and give y'all a chance  
11 to reply.

12 But I see this as really on the legal side of  
13 things as opposed to the factual side of things.

14 So I don't see them being necessarily  
10:41AM 15 interdependent because, you know, it's not like a summary  
16 judgment in the sense that, hey, there's a fact issue here  
17 because, I mean, the fact issues don't matter. They're going  
18 to go to the jury and the jury is going to decide that.

19 But I do see it as a summary judgment in that,  
10:41AM 20 you know, essentially the government is in the shoes of a  
21 plaintiff and, hey, they don't have a cause of action.

22 MR. REYES: Your Honor, we would only add that -- I  
23 don't disagree with the Court. I do think that the facts can  
24 inform the legal argument to a certain extent in terms of  
10:41AM 25 knowing the full universe of what's out there against the

1 defendants, but I don't disagree with this would be a legal  
2 argument.

3 THE COURT: Okay. All right. Well, if anybody else  
4 wants to weigh in on this scheduling order, because I'm  
10:42AM 5 probably going to enter one. But as of right now, the June 5th  
6 deadline stays where it is, the trial date stays where it is;  
7 and we're working under that assumption.

8 MR. WILLIAMS: Judge, I have a brief question. Given  
9 the scheduling order and the statements just made about the  
10:42AM 10 volume of tweets per ticker and the number of tickers disclosed  
11 on March 31st, what is the government's estimate for trial in  
12 this case, because that may affect different people's  
13 scheduling responses especially given the volume of demands on  
14 Mr. Lewis's time.

10:42AM 15 THE COURT: A day? Two days?

16 MR. ARMSTRONG: Your Honor, I haven't given it too much  
17 thought.

18 THE COURT: Lucius Bunton approach. Y'all are too  
19 young to understand that reference.

10:42AM 20 MR. ARMSTRONG: I would say our case-in-chief as the  
21 case stands with all the defendants in it right now would  
22 probably be two weeks at the most.

23 THE COURT: Two weeks for your case?

24 MR. ARMSTRONG: Yes, Your Honor.

10:43AM 25 THE COURT: Okay. We'll work on that; but, I mean, the



1 way I view this is -- and I don't like to try people's cases  
2 for them; but it's in our handbook for federal judges that we  
3 end up doing that anyway, that here is the stock, here is what  
4 they said. Kind of what you did today: Here is what they did.

10:43AM

5 And then I'm not putting words in the mouth of  
6 Mr. Williams, but they're going to get up and say: Here is  
7 what we said. We said the sun rises in the east. It does rise  
8 in the east. You know, what's false about that?

10:44AM

9 And then the jury eventually is going to have to  
10 resolve the intent and the truth or falsities of some things.

11 MR. ARMSTRONG: So, Your Honor, the only reason why I  
12 think that it might be on the longer side of things is that  
13 there are essentially 20 substantive counts and so we just have  
14 not come to grounds sitting here today how many individual  
15 retail investors that are putative victims in this case that  
16 will be testifying.

10:44AM

17 THE COURT: I'm just giving you a heads-up though that  
18 this won't be the first time the Court will tell you to be  
19 concise.

10:44AM

20 MR. ARMSTRONG: You don't have to worry about that.

21 MR. WILLIAMS: Given the current calendar and what I've  
22 heard today, I can see us here through Valentine's Day.

23 THE COURT: No.

24 All right. Thank y'all.

10:44AM

25 MR. ARMSTRONG: Thank you, Judge.

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(The proceedings were adjourned.)

\* \* \* \*

REPORTER'S CERTIFICATE

I, Lanie M. Smith, CSR, RMR, CRR, Official  
Court Reporter, United States District Court, Southern District  
of Texas, do hereby certify that the foregoing is a true and  
correct transcript, to the best of my ability and  
understanding, from the record of the proceedings in the  
above-entitled and numbered matter.

/s/ Lanie M. Smith  
Official Court Reporter

<div>\$</div>	<div>1461 [2] - 47:8, 48:2 14th [1] - 22:13 15 [3] - 30:5, 46:19, 59:8 1500 [1] - 59:10 18 [4] - 36:8, 36:20, 36:21, 37:17 18,000 [1] - 21:11 1957 [1] - 35:25</div>	<div>49-point-whatever-million-dollars [1] - 34:21 4:22-CR-00612 [1] - 1:4 4:22-cr-00612-3 [1] - 1:4 4th [1] - 16:8</div>
<div>\$10 [1] - 9:8 \$11 [1] - 22:19 \$15,000 [1] - 30:5 \$16 [1] - 25:4 \$18 [3] - 27:17, 36:15, 37:14 \$23 [13] - 29:7, 29:12, 29:19, 29:20, 29:21, 32:25, 33:6, 33:7, 33:12, 34:13, 34:25, 38:11, 38:17 \$250,000 [1] - 35:14 \$3,000 [1] - 23:10 \$365,000 [1] - 33:25 \$4.80 [1] - 9:12 \$400,000 [1] - 34:4 \$5,000 [2] - 46:9, 47:20 \$50 [2] - 25:2, 34:16 \$50,000 [3] - 35:6, 40:21, 44:12 \$500 [1] - 25:5 \$700,000 [1] - 22:23 \$ACST [1] - 16:1 \$DATS [6] - 10:8, 21:2, 21:18, 22:13, 22:19, 22:24</div>	<div>2</div>	<div>5 [5] - 9:11, 12:24, 15:24, 21:16, 21:22 5,000-dollar [1] - 47:14 50 [2] - 37:15, 58:20 50,000 [2] - 22:20 500 [2] - 25:3, 25:8 515 [1] - 2:11 5th [8] - 13:20, 16:13, 48:24, 52:24, 59:1, 60:7, 62:4, 64:5</div>
<div>,</div>	<div>2 [3] - 4:3, 8:9, 18:9 2-million-dollar [1] - 33:20 20 [2] - 59:8, 65:13 200 [2] - 33:4 200-plus [1] - 33:3 20005 [1] - 1:19 2011 [2] - 25:1, 25:7 2020 [5] - 12:24, 15:23, 15:24, 16:8 2021 [1] - 21:1 2023 [2] - 1:8, 18:8 20th [1] - 13:10 21 [4] - 8:12, 12:2, 17:4, 60:24 22 [1] - 61:2 22-cr-612 [1] - 3:3 225 [1] - 2:2 23 [2] - 34:21, 37:15 23-million-dollar [1] - 38:18 2300 [1] - 1:15 234 [1] - 18:10 24 [1] - 23:10 25 [1] - 14:14 25,000 [1] - 21:11 25th [1] - 10:25 26th [1] - 2:2 28 [1] - 13:10 28th [1] - 61:3</div>	<div>6</div>
<div>'</div>		<div>620 [1] - 1:22 650,000 [1] - 22:11 6719 [1] - 47:6</div>
<div>'21 [2] - 13:10 '22 [1] - 37:6</div>		<div>7</div>
<div>/</div>		<div>77002 [2] - 1:16, 2:12 77006-3905 [1] - 2:7 78738 [1] - 1:23</div>
<div>/s [1] - 66:8</div>		<div>8</div>
<div>0</div>		<div>8.4 [2] - 37:18, 37:20 80,000 [1] - 21:10 8004 [1] - 2:11 819 [1] - 2:6</div>
<div>02110 [1] - 2:3</div>		<div>9</div>
<div>1</div>	<div>3</div>	<div>9.74 [1] - 22:11 90,000 [1] - 21:11 91 [4] - 21:14, 21:18, 21:21, 22:8 95,000 [1] - 21:10 98,000 [1] - 21:10 984 [2] - 36:7, 36:8</div>
<div>1 [6] - 3:25, 9:10, 12:19, 18:15, 18:24, 52:22 10 [4] - 9:7, 22:21, 25:4, 26:2 10,000 [1] - 36:3 10/25 [2] - 23:3, 23:5 1000 [1] - 1:15 10:18 [1] - 23:1 10b5-1 [1] - 24:16 11-page [1] - 19:9 11/10 [1] - 23:8 11:30 [1] - 22:13 12 [1] - 1:8 12(b)(6) [1] - 50:16 13 [3] - 18:15, 19:21, 21:1 1348 [5] - 8:6, 8:7, 11:16, 17:2, 50:22 1348(2) [1] - 11:14 1349 [2] - 8:5, 50:23 13F [1] - 32:5 13th [1] - 28:23 14 [5] - 19:18, 20:2, 20:5, 20:13, 21:21 1400 [1] - 1:19</div>	<div>3 [3] - 9:11, 12:24, 15:23 30 [6] - 22:19, 22:24, 23:5, 25:23, 60:25 30++ [1] - 22:14 30,000 [2] - 21:10, 21:11 300,000 [1] - 22:22 31st [4] - 18:8, 52:23, 59:16, 64:11 34 [1] - 45:9 3511 [1] - 47:6 3700 [1] - 1:22</div>	<div>A</div>
	<div>4</div>	<div>a [280] - 3:15, 3:16, 3:21, 4:1, 4:8, 4:9, 4:25, 5:3, 5:4, 5:7, 5:9, 5:12, 5:20, 5:22, 6:3, 6:4, 6:14, 7:5, 7:15, 7:17, 8:5, 8:10, 8:12, 8:14, 8:24, 9:1, 9:5, 9:8, 9:14, 9:15, 9:23, 10:5, 10:9, 10:12, 10:16, 10:17, 10:18, 10:19, 10:22, 11:2, 11:8, 11:12, 11:14, 11:21, 12:2, 12:7, 12:12, 12:19, 12:23, 12:25, 13:1, 13:5, 13:11, 13:17, 14:6, 14:11, 14:16, 15:2, 16:2, 16:4, 16:10, 16:14, 16:15, 16:16, 17:7, 17:8, 17:17, 17:21, 18:1, 18:8, 18:13, 18:23, 18:24, 18:25, 19:9, 19:19, 20:9, 21:3, 21:5, 21:22, 21:25, 22:2, 22:3,</div>
	<div>400 [1] - 15:20 402 [3] - 12:9, 49:6, 49:9 41(g) [7] - 39:2, 39:10, 41:15, 41:21, 42:9, 42:12, 45:5 41(g) [3] - 39:18, 41:6, 41:15 46 [4] - 36:15, 36:18, 37:16, 37:17 466,000 [1] - 21:11 49 [2] - 40:21, 44:13</div>	

22:4, 22:13, 22:21, 23:4, 23:6, 23:11, 23:21, 24:11, 24:12, 24:14, 24:20, 24:21, 24:22, 25:13, 25:14, 25:18, 26:1, 26:8, 26:12, 26:13, 26:15, 28:15, 28:16, 29:25, 30:8, 30:15, 30:17, 30:24, 31:6, 31:9, 31:10, 31:11, 31:24, 31:25, 32:5, 32:8, 32:9, 32:10, 32:11, 32:14, 32:15, 32:20, 32:24, 33:10, 33:18, 33:19, 33:20, 33:23, 34:1, 34:5, 34:15, 34:17, 34:22, 35:23, 36:10, 37:11, 37:23, 38:1, 38:3, 38:11, 38:23, 39:5, 39:8, 40:1, 40:4, 40:5, 40:10, 40:13, 40:15, 40:16, 40:24, 41:9, 41:10, 41:11, 42:1, 42:2, 42:5, 42:7, 42:10, 42:11, 42:17, 42:24, 43:7, 43:9, 43:10, 43:12, 43:14, 43:19, 43:22, 43:25, 44:2, 44:3, 44:4, 44:21, 45:3, 45:16, 46:5, 46:7, 46:14, 48:13, 48:24, 48:25, 49:1, 49:3, 49:9, 49:13, 49:24, 50:2, 50:3, 50:4, 50:8, 50:9, 50:10, 50:14, 50:15, 50:16, 50:20, 50:22, 51:3, 51:4, 51:5, 51:9, 51:17, 52:3, 52:12, 52:21, 53:11, 53:17, 53:21, 53:24, 54:2, 54:12, 54:14, 54:23, 54:24, 55:2, 55:14, 55:15, 55:19, 55:22, 55:23, 55:24, 56:13, 56:19, 56:23, 57:2, 57:6, 57:8, 58:10, 58:19, 59:3, 59:19, 60:2, 60:15, 60:23, 61:5, 62:2, 62:4, 62:7, 62:9, 62:17, 62:24, 63:6, 63:8, 63:10, 63:15, 63:16, 63:19, 63:20, 63:21, 63:24, 64:1, 64:8, 64:15, 65:17, 66:5  
**A** [3] - 52:23, 52:24, 53:6  
**a)(1)(C)** [1] - 35:16  
**A-Plus** [3] - 52:23, 52:24, 53:6  
**AARON** [1] - 1:21  
**abandon** [1] - 34:14  
**ability** [2] - 37:4, 66:5  
**able** [8] - 5:16, 5:25, 17:8, 18:4, 26:6, 37:2, 49:10, 63:2  
**about** [68] - 4:3, 4:25, 7:5, 8:4, 8:23, 9:12, 9:17, 10:22, 13:21, 14:11, 14:13, 14:14, 14:17, 14:20, 14:21, 14:25, 15:17, 15:21, 15:25, 16:17, 16:20, 17:1, 17:19, 18:3, 18:7, 19:14, 20:12, 21:16, 21:23, 22:16, 22:22, 22:23, 26:25, 27:6, 29:18, 30:1, 30:18, 31:6, 32:8, 32:11, 33:12, 35:13, 35:14, 37:12, 37:15, 40:8, 41:1, 42:5, 42:23, 44:21, 45:6, 45:8, 45:19, 46:15, 46:16, 51:4, 55:17, 57:7, 57:23, 58:14, 58:15, 59:5, 64:9, 65:8, 65:20  
**above** [2] - 51:7, 66:6  
**above-entitled** [1] - 66:6  
**absolute** [1] - 42:2  
**absolutely** [4] - 19:7, 29:22, 41:8, 58:9  
**ABVC** [1] - 33:20  
**accept** [2] - 10:13, 24:1  
**acceptable** [1] - 53:1  
**accepting** [2] - 36:17, 37:19  
**access** [5] - 15:12, 28:21, 28:22, 36:22, 47:3

**accessible** [1] - 48:7  
**accompanied** [1] - 33:14  
**according** [8] - 3:17, 11:24, 12:8, 12:16, 24:19, 25:7, 25:24, 25:25  
**account** [17] - 3:23, 14:16, 35:24, 44:2, 44:3, 44:5, 44:12, 44:14, 44:16, 44:21, 46:3, 46:5, 47:7, 47:24, 48:2, 56:20  
**accounts** [20] - 27:6, 27:7, 27:22, 28:4, 28:10, 29:3, 30:6, 35:21, 36:23, 36:24, 37:13, 37:14, 37:21, 43:24, 44:9, 44:10, 47:6, 47:16, 47:19, 47:25  
**accurate** [2] - 4:18, 34:12  
**acknowledge** [1] - 40:19  
**acknowledging** [1] - 57:10  
**across** [1] - 11:19  
**ACST** [7] - 12:23, 13:1, 14:13, 15:20, 15:23, 16:4, 16:11  
**action** [2] - 50:17, 63:21  
**actionable** [1] - 56:1  
**activity** [1] - 46:16  
**actual** [3] - 4:10, 43:18, 45:20  
**actually** [13] - 13:14, 19:18, 20:23, 23:3, 29:25, 30:11, 35:23, 38:24, 41:2, 45:12, 45:15, 54:17, 54:23  
**add** [1] - 63:22  
**added** [4] - 16:9, 30:25, 31:2, 45:11  
**adding** [1] - 30:25  
**addition** [1] - 13:19  
**additional** [3] - 12:14, 14:23, 37:10  
**address** [4] - 3:6, 12:5, 37:22, 39:3  
**addressed** [1] - 39:11  
**adequately** [3] - 49:4, 50:11, 62:4  
**adjourned** [1] - 66:1  
**administration** [1] - 9:16  
**ADMP** [4] - 13:9, 14:19, 15:14, 15:18  
**adopted** [1] - 17:25  
**adversarial** [1] - 49:23  
**advice** [3] - 25:22, 31:17, 32:23  
**advised** [1] - 6:10  
**advisor** [1] - 24:22  
**affect** [1] - 64:12  
**affiant's** [1] - 29:6  
**affidavit** [10] - 27:15, 29:4, 29:12, 30:1, 33:2, 35:12, 35:20, 37:8, 44:7, 45:10  
**affirmative** [1] - 24:2  
**after** [17] - 3:16, 4:4, 4:21, 5:9, 9:9, 17:12, 20:3, 21:9, 21:12, 21:15, 21:17, 22:18, 22:25, 27:24, 28:24, 32:12, 51:3  
**again** [25] - 6:19, 6:25, 10:25, 11:1, 11:20, 13:13, 13:15, 15:9, 16:10, 20:13, 22:9, 22:18, 22:23, 23:14, 24:21, 29:7, 29:17, 34:3, 35:13, 36:10, 38:14, 39:10, 61:9  
**against** [6] - 9:3, 9:22, 56:17, 58:1, 58:17, 63:25  
**agent** [3] - 29:19, 38:15, 45:9  
**aggregated** [1] - 33:5  
**aggregating** [1] - 18:16  
**ago** [2] - 18:1, 45:3

**agree** [6] - 40:3, 41:2, 46:20, 49:21, 55:22  
**agreed** [1] - 52:25  
**ahead** [4] - 3:9, 28:20, 56:4, 56:21  
**AHPI** [1] - 33:25  
**ain't** [1] - 54:2  
**all** [63] - 3:3, 5:25, 6:20, 7:9, 7:13, 9:3, 9:8, 9:16, 11:1, 12:7, 13:2, 13:6, 14:7, 14:20, 14:24, 15:3, 19:21, 21:23, 23:12, 26:10, 26:20, 26:22, 27:9, 29:6, 29:18, 30:1, 30:6, 30:12, 30:19, 30:20, 30:21, 31:17, 31:22, 35:20, 37:20, 39:13, 39:18, 40:2, 40:8, 40:9, 41:2, 41:19, 43:8, 44:11, 47:5, 47:19, 48:11, 50:10, 50:21, 52:25, 53:6, 54:2, 54:19, 57:9, 59:12, 59:20, 59:21, 60:7, 62:16, 64:3, 64:21, 65:24  
**allegations** [10] - 29:18, 33:18, 36:1, 36:2, 38:14, 38:15, 46:10, 55:7, 55:10, 55:11  
**allege** [3] - 37:15, 42:18, 42:19  
**alleged** [18] - 8:2, 8:12, 12:18, 13:11, 18:14, 30:1, 30:10, 31:15, 33:25, 36:16, 36:18, 38:1, 38:9, 39:15, 40:24, 49:6, 57:21, 62:18  
**alleges** [2] - 37:8, 38:12  
**alleging** [2] - 24:7, 42:21  
**allow** [1] - 62:9  
**allowed** [2] - 34:10, 37:21  
**allowing** [2] - 17:13, 47:16  
**allows** [1] - 47:11  
**alluded** [1] - 58:23  
**almost** [1] - 9:11  
**alone** [2] - 38:9, 45:16  
**already** [2] - 13:24, 15:5  
**also** [13] - 3:20, 6:10, 6:11, 11:7, 18:25, 38:13, 38:25, 39:10, 42:17, 46:7, 47:16, 51:16, 51:21  
**although** [1] - 15:6  
**altogether** [1] - 49:16  
**always** [2] - 58:17, 62:15  
**am** [2] - 32:21, 45:19  
**Amazon** [1] - 25:20  
**amend** [1] - 51:16  
**Amendment** [3] - 33:23, 56:15, 56:18  
**AMERICA** [1] - 1:4  
**America** [7] - 28:4, 28:5, 28:18, 28:23, 36:22, 43:24, 48:4  
**amongst** [1] - 19:7  
**amount** [3] - 36:9, 36:21, 48:24  
**an** [36] - 3:23, 4:21, 8:10, 8:22, 9:25, 10:6, 11:14, 14:1, 18:2, 22:11, 24:2, 24:11, 24:12, 24:23, 25:1, 25:16, 26:4, 31:13, 38:12, 39:15, 41:8, 41:15, 41:21, 42:13, 43:13, 47:7, 48:3, 49:23, 53:1, 53:17, 53:18, 53:24, 54:8, 54:16, 61:18  
**analogy** [1] - 53:24  
**analysis** [3] - 40:15, 43:3, 45:4  
**analyst** [1] - 24:23  
**and** [382] - 1:8, 3:11, 3:17, 3:18, 3:20,

3:22, 4:4, 4:8, 4:11, 4:13, 4:14, 4:23, 5:1, 5:4, 5:6, 5:12, 5:20, 5:22, 5:24, 6:9, 6:10, 6:17, 6:18, 6:19, 6:24, 7:3, 7:6, 7:25, 8:6, 8:17, 8:18, 8:25, 9:4, 9:22, 9:24, 10:1, 10:2, 10:10, 10:11, 10:20, 11:1, 11:2, 11:6, 11:12, 11:21, 11:24, 12:10, 12:11, 12:17, 12:18, 12:19, 12:24, 13:1, 13:2, 13:4, 13:10, 13:11, 13:14, 13:20, 14:17, 14:21, 14:24, 14:25, 15:7, 15:19, 15:20, 15:23, 16:4, 16:8, 16:14, 16:18, 16:19, 16:22, 17:5, 17:6, 17:24, 18:4, 18:5, 18:11, 18:15, 18:19, 18:20, 18:21, 18:25, 19:1, 19:2, 19:4, 19:5, 19:7, 19:11, 19:15, 19:16, 19:17, 19:18, 19:22, 19:23, 19:24, 19:25, 20:1, 20:5, 20:6, 20:10, 20:11, 20:15, 20:20, 20:22, 21:5, 21:8, 21:16, 21:17, 21:22, 21:23, 22:9, 22:18, 22:23, 23:8, 23:13, 23:14, 23:22, 24:4, 24:18, 24:21, 25:2, 25:3, 25:10, 25:14, 25:19, 26:7, 26:11, 26:15, 26:16, 27:17, 28:21, 28:23, 28:24, 29:6, 29:22, 29:23, 30:1, 30:2, 30:3, 30:5, 30:10, 30:12, 30:13, 30:18, 30:19, 30:20, 30:21, 30:23, 30:24, 31:1, 31:3, 31:6, 31:8, 31:12, 31:15, 31:20, 31:22, 31:24, 32:2, 32:5, 32:8, 32:21, 33:2, 33:5, 33:6, 33:14, 33:17, 33:20, 33:21, 33:23, 33:24, 34:3, 34:5, 34:7, 34:12, 34:22, 35:1, 35:4, 35:7, 35:10, 35:12, 35:15, 35:16, 35:19, 35:21, 35:23, 35:25, 36:2, 36:5, 36:9, 36:11, 36:12, 36:13, 37:25, 38:2, 38:4, 38:5, 38:7, 38:17, 38:19, 38:21, 38:25, 39:3, 39:6, 39:13, 39:18, 39:19, 40:2, 40:4, 40:11, 40:14, 40:18, 40:21, 40:24, 41:9, 41:10, 41:11, 41:23, 42:5, 42:9, 42:14, 42:15, 42:23, 42:24, 42:25, 43:3, 43:6, 43:8, 43:14, 43:15, 43:16, 43:24, 44:1, 44:3, 44:13, 45:14, 45:21, 46:9, 46:11, 46:21, 47:2, 47:3, 47:6, 47:7, 47:9, 47:10, 47:12, 47:13, 47:14, 47:16, 47:23, 48:14, 48:17, 48:18, 48:22, 49:2, 49:6, 49:7, 49:22, 50:8, 50:22, 51:5, 51:7, 51:9, 51:10, 51:21, 51:23, 52:3, 52:12, 52:13, 52:21, 52:22, 52:23, 53:1, 53:3, 53:4, 53:11, 53:16, 53:18, 53:20, 53:23, 54:2, 54:4, 54:5, 54:14, 54:15, 54:16, 55:2, 55:3, 55:16, 55:21, 55:23, 56:4, 56:6, 56:7, 56:10, 56:15, 57:2, 57:16, 57:18, 57:20, 57:25, 58:1, 58:2, 58:20, 58:22, 58:23, 58:24, 59:3, 59:6, 59:13, 59:14, 59:15, 59:19, 59:23, 60:2, 60:3, 60:5, 60:6, 60:13, 60:16, 60:25, 61:2, 61:4, 61:9, 61:13, 61:17, 61:19, 61:20, 61:24, 62:5, 62:9, 62:11, 62:13, 62:23, 63:2, 63:5, 63:6, 63:8, 63:10, 63:18, 63:21, 64:7, 64:9, 64:10, 65:1, 65:5, 65:6, 65:9, 65:10, 65:13, 65:21, 66:5, 66:5, 66:6

**ANDREW** [1] - 1:10

**anger** [1] - 5:21

**angry** [1] - 6:18

**another** [11] - 7:14, 13:7, 22:22, 23:16, 23:22, 27:12, 32:22, 44:7, 50:6, 56:15  
**answer** [5] - 12:1, 17:11, 23:18, 39:4, 44:19

**anticipate** [1] - 5:22

**any** [26] - 5:18, 5:19, 6:21, 6:24, 8:15, 17:11, 23:18, 26:5, 26:6, 27:4, 27:16, 31:17, 33:22, 35:19, 36:25, 37:1, 37:10, 39:4, 48:19, 49:3, 49:16, 49:17, 49:20, 49:23, 57:6, 60:17

**anybody** [3] - 13:5, 28:9, 64:3

**anyone** [1] - 49:20

**anything** [6] - 5:23, 6:3, 6:15, 15:17, 36:3, 44:21

**anyway** [1] - 65:3

**apologize** [1] - 6:16

**apparent** [1] - 8:18

**apparently** [2] - 20:1, 33:24

**appear** [1] - 12:2

**APPEARANCES** [1] - 1:13

**appears** [5] - 4:20, 11:5, 11:6, 13:9, 15:1

**Apple** [1] - 14:2

**applicable** [3] - 42:1, 50:7, 51:5

**application** [1] - 24:4

**applies** [2] - 36:10, 56:20

**apply** [3] - 41:22, 43:15, 50:22

**applying** [1] - 43:18

**appreciate** [2] - 17:12, 21:6

**approach** [1] - 64:18

**appropriate** [2] - 6:3, 26:8

**approval** [1] - 46:9

**approximately** [1] - 22:11

**APRIL** [1] - 1:8

**are** [75] - 3:11, 4:1, 6:7, 8:2, 8:6, 8:17, 9:4, 11:18, 12:18, 13:11, 15:19, 16:13, 18:25, 19:1, 19:3, 19:4, 19:22, 20:1, 21:23, 23:11, 24:16, 26:14, 27:21, 27:22, 27:23, 28:5, 28:8, 28:10, 29:18, 32:4, 34:19, 35:3, 35:17, 36:14, 36:19, 37:18, 40:10, 40:15, 40:19, 41:12, 41:19, 41:20, 42:4, 42:23, 43:8, 44:10, 45:15, 46:15, 47:19, 48:11, 51:19, 51:20, 53:1, 53:10, 54:17, 55:7, 56:15, 56:16, 57:13, 57:25, 58:7, 59:5, 59:12, 59:14, 59:15, 59:16, 61:12, 61:14, 64:18, 65:13, 65:15

**argue** [4] - 19:11, 34:25, 35:6, 53:20

**argued** [1] - 40:11

**arguing** [3] - 26:12, 50:13, 54:1

**argument** [14] - 23:4, 26:11, 26:12, 34:15, 40:10, 40:13, 42:12, 42:13, 43:19, 50:22, 55:22, 62:20, 63:24, 64:2

**arguments** [6] - 31:9, 37:23, 40:9, 40:10, 40:15, 56:22

**arm** [1] - 32:11

**Armstrong** [5] - 3:8, 38:12, 55:11, 58:5, 60:9

**ARMSTRONG** [26] - 1:17, 3:7, 3:10,

17:16, 26:21, 52:8, 52:21, 53:16, 53:25, 54:3, 54:7, 54:10, 56:12, 58:6, 58:9, 58:16, 58:19, 59:6, 59:9, 59:12, 64:16, 64:20, 64:24, 65:11, 65:20, 65:25

**around** [5] - 6:14, 20:10, 22:19, 30:20, 42:25

**articulated** [1] - 55:11

**as** [102] - 5:10, 6:3, 7:16, 9:4, 9:5, 9:17, 10:13, 10:18, 11:11, 12:12, 13:16, 13:24, 13:25, 14:1, 14:13, 15:10, 15:11, 15:12, 15:15, 16:15, 17:9, 18:5, 19:13, 19:21, 20:20, 21:20, 23:6, 23:9, 23:11, 23:18, 24:12, 25:10, 25:14, 27:15, 30:25, 31:5, 32:20, 35:3, 35:14, 37:7, 38:12, 38:14, 38:15, 39:10, 40:5, 40:24, 41:2, 41:24, 42:6, 43:5, 44:16, 46:4, 46:24, 47:1, 47:6, 47:15, 48:23, 49:1, 49:3, 49:5, 49:10, 49:22, 49:24, 50:4, 50:9, 50:20, 50:21, 51:1, 51:8, 52:13, 53:9, 53:11, 53:17, 53:24, 54:14, 55:18, 56:7, 56:8, 56:14, 58:12, 58:23, 60:2, 60:10, 61:12, 61:25, 62:10, 62:16, 62:25, 63:12, 63:13, 63:19, 64:5, 64:20

**aside** [2] - 53:4, 54:6

**ask** [5] - 39:4, 43:22, 48:17, 50:12, 55:21

**asked** [1] - 41:15

**asking** [1] - 39:14

**asks** [1] - 41:23

**assertion** [1] - 29:6

**asset** [2] - 36:10, 39:16

**assets** [3] - 41:16, 41:19, 47:10

**Associates** [1] - 2:6

**assume** [5] - 46:5, 50:17, 52:4, 55:21, 62:17

**assumed** [1] - 26:18

**assuming** [2] - 28:17, 43:10

**assumption** [1] - 64:7

**at** [68] - 5:25, 6:7, 9:2, 10:15, 14:13, 14:20, 16:15, 18:9, 18:12, 19:11, 20:9, 20:10, 21:15, 22:6, 22:11, 22:13, 23:12, 25:2, 25:6, 26:7, 26:9, 29:6, 29:18, 30:1, 31:9, 31:10, 32:2, 33:22, 34:6, 34:23, 36:14, 36:15, 40:3, 42:18, 43:8, 43:9, 43:24, 44:6, 44:10, 44:14, 44:16, 45:14, 46:14, 46:23, 47:18, 47:19, 47:25, 49:5, 49:25, 50:10, 52:1, 52:10, 54:9, 55:9, 55:25, 56:8, 57:6, 57:19, 59:22, 60:11, 62:16, 63:4, 64:22

**Atlas** [2] - 18:13, 19:6

**attach** [3] - 33:17, 34:3, 34:4

**attached** [3] - 29:4, 38:6, 38:19

**attacked** [1] - 17:21

**attempted** [1] - 3:18

**attempting** [1] - 24:14

**Attorney's** [1] - 1:14

**attorney's** [1] - 50:6

**attorneys** [3] - 53:10, 58:20

**attributed** [1] - 6:9

**August** [1] - 11:3

**Austin** <sup>[1]</sup> - 1:23  
**authority** <sup>[1]</sup> - 50:5  
**autocorrect** <sup>[1]</sup> - 31:4  
**automatically** <sup>[1]</sup> - 39:8  
**automobiles** <sup>[1]</sup> - 47:17  
**available** <sup>[4]</sup> - 17:11, 40:6, 41:23, 61:9  
**avenue** <sup>[3]</sup> - 41:7, 41:8, 45:7  
**Avenue** <sup>[1]</sup> - 1:19  
**average** <sup>[1]</sup> - 22:11  
**averred** <sup>[1]</sup> - 45:9  
**avoid** <sup>[2]</sup> - 42:11, 46:24  
**awaiting** <sup>[1]</sup> - 25:9  
**aware** <sup>[1]</sup> - 32:21  
**away** <sup>[1]</sup> - 34:14  
**axiomatic** <sup>[1]</sup> - 27:14

## B

**B** <sup>[1]</sup> - 1:23  
**back** <sup>[11]</sup> - 19:17, 25:5, 30:3, 36:19, 39:2, 39:13, 39:18, 42:25, 45:5, 56:23, 59:9  
**background** <sup>[1]</sup> - 11:11  
**bail** <sup>[2]</sup> - 5:1, 5:20  
**ballpark** <sup>[1]</sup> - 59:3  
**bank** <sup>[11]</sup> - 27:6, 27:7, 27:22, 28:10, 29:3, 30:6, 35:23, 37:21, 44:9, 44:10, 47:24  
**Bank** <sup>[7]</sup> - 28:4, 28:5, 28:18, 28:23, 36:22, 43:24, 48:4  
**banks** <sup>[1]</sup> - 28:14  
**bar** <sup>[2]</sup> - 6:5, 56:3  
**barred** <sup>[1]</sup> - 24:25  
**based** <sup>[12]</sup> - 8:6, 15:16, 16:2, 16:10, 17:21, 17:22, 29:11, 37:17, 39:20, 45:16, 59:16, 62:16  
**basically** <sup>[9]</sup> - 11:17, 26:13, 30:8, 31:4, 33:13, 33:22, 50:15, 56:24, 62:22  
**basing** <sup>[1]</sup> - 52:12  
**basis** <sup>[2]</sup> - 29:13, 55:8  
**bat** <sup>[1]</sup> - 30:4  
**battle** <sup>[1]</sup> - 53:18  
**BBJ** <sup>[1]</sup> - 23:16  
**be** <sup>[59]</sup> - 4:11, 5:16, 5:20, 5:25, 8:20, 11:6, 12:13, 17:21, 18:4, 19:9, 22:3, 23:4, 23:23, 26:3, 26:6, 26:12, 26:15, 27:14, 29:23, 32:20, 36:16, 36:18, 39:20, 40:7, 41:5, 42:1, 45:5, 45:20, 46:21, 47:2, 47:10, 48:6, 48:7, 48:14, 49:4, 49:10, 49:19, 51:16, 51:18, 51:23, 53:3, 53:11, 55:17, 56:2, 56:14, 58:3, 58:4, 58:22, 60:5, 61:9, 62:8, 63:2, 64:1, 64:22, 65:12, 65:16, 65:18  
**beating** <sup>[1]</sup> - 22:16  
**because** <sup>[42]</sup> - 3:15, 3:20, 5:14, 11:13, 20:7, 25:7, 27:20, 32:4, 33:1, 33:3, 35:15, 35:17, 36:7, 37:5, 37:23, 39:19, 40:5, 40:15, 41:3, 42:13, 43:7, 43:25, 47:18, 47:22, 48:18, 49:15, 50:8, 51:18, 55:15, 57:2, 57:14, 57:16, 58:12, 59:25,

60:24, 63:1, 63:3, 63:15, 63:17, 64:4, 64:12  
**become** <sup>[1]</sup> - 46:19  
**been** <sup>[29]</sup> - 4:21, 5:21, 6:10, 8:3, 11:9, 11:10, 13:16, 16:7, 17:25, 18:19, 22:16, 28:1, 28:4, 28:6, 28:7, 32:7, 32:17, 37:3, 40:4, 41:2, 41:9, 41:18, 41:24, 47:13, 48:16, 48:23, 50:2, 51:10, 54:13  
**BEFORE** <sup>[1]</sup> - 1:10  
**before** <sup>[11]</sup> - 12:3, 27:18, 28:22, 38:3, 39:17, 40:1, 40:18, 50:14, 51:11, 54:9, 54:13  
**beginning** <sup>[2]</sup> - 6:18, 52:5  
**behalf** <sup>[3]</sup> - 6:13, 50:5, 54:22  
**behind** <sup>[1]</sup> - 60:23  
**being** <sup>[10]</sup> - 5:10, 6:3, 9:17, 10:13, 49:10, 50:18, 62:16, 62:25, 63:1, 63:14  
**believe** <sup>[16]</sup> - 6:11, 7:14, 7:19, 7:24, 15:5, 30:8, 31:3, 54:6, 56:2, 56:8, 61:12, 61:14, 62:1, 62:3, 62:7, 62:10  
**believes** <sup>[2]</sup> - 24:20, 33:19  
**Bell** <sup>[1]</sup> - 16:6  
**benefit** <sup>[1]</sup> - 53:6  
**best** <sup>[5]</sup> - 5:21, 6:19, 36:14, 50:19, 66:5  
**better** <sup>[1]</sup> - 28:12  
**between** <sup>[7]</sup> - 12:24, 13:10, 19:6, 55:15, 55:22, 60:25, 61:2  
**beyond** <sup>[1]</sup> - 51:7  
**big** <sup>[1]</sup> - 59:20  
**bill** <sup>[3]</sup> - 7:15, 31:10, 33:3  
**bit** <sup>[3]</sup> - 32:24, 60:23, 61:5  
**black** <sup>[1]</sup> - 17:20  
**blanket** <sup>[1]</sup> - 6:5  
**block** <sup>[1]</sup> - 41:20  
**Bldv** <sup>[1]</sup> - 2:6  
**BOA** <sup>[1]</sup> - 44:10  
**boils** <sup>[1]</sup> - 31:5  
**bona** <sup>[1]</sup> - 26:5  
**book** <sup>[1]</sup> - 31:21  
**books** <sup>[1]</sup> - 54:13  
**born** <sup>[1]</sup> - 54:14  
**Boston** <sup>[1]</sup> - 2:3  
**both** <sup>[10]</sup> - 7:25, 9:22, 18:14, 27:2, 41:20, 45:18, 45:21, 56:6, 56:7, 56:10  
**bottom** <sup>[1]</sup> - 22:14  
**bought** <sup>[2]</sup> - 34:5, 62:21  
**bread** <sup>[3]</sup> - 55:24, 56:7, 56:8  
**brief** <sup>[6]</sup> - 6:8, 10:14, 30:11, 34:14, 38:3, 64:8  
**briefed** <sup>[2]</sup> - 56:4, 56:21  
**briefly** <sup>[3]</sup> - 37:22, 39:3, 44:23  
**bring** <sup>[2]</sup> - 27:12, 52:19  
**bringing** <sup>[1]</sup> - 26:17  
**broad** <sup>[1]</sup> - 55:10  
**brought** <sup>[2]</sup> - 17:1, 50:12  
**Bunton** <sup>[1]</sup> - 64:18  
**burden** <sup>[4]</sup> - 34:24, 35:2, 35:4, 45:22  
**but** <sup>[92]</sup> - 3:16, 4:3, 4:9, 4:20, 6:9, 7:7, 10:13, 10:16, 11:7, 11:15, 13:6, 13:17,

14:2, 14:9, 15:3, 17:2, 17:12, 18:24, 19:8, 20:21, 21:4, 23:2, 23:17, 26:3, 26:12, 29:1, 29:13, 29:16, 31:4, 31:9, 31:13, 31:25, 32:3, 33:12, 35:8, 36:7, 36:9, 37:10, 37:12, 40:8, 41:4, 41:22, 42:2, 42:9, 42:18, 43:2, 44:1, 44:14, 45:24, 46:3, 47:12, 48:1, 48:7, 48:16, 50:6, 50:25, 51:2, 51:15, 51:17, 52:1, 52:9, 52:18, 53:14, 54:1, 54:8, 55:1, 55:25, 56:3, 56:5, 56:13, 57:3, 57:7, 59:12, 59:24, 60:14, 60:17, 61:3, 61:11, 61:18, 62:6, 62:10, 62:15, 62:16, 62:18, 63:2, 63:12, 63:19, 64:1, 64:5, 64:25, 65:2, 65:6  
**buy** <sup>[3]</sup> - 9:1, 21:16, 25:11  
**buying** <sup>[3]</sup> - 10:20, 22:10, 25:13  
**buys** <sup>[2]</sup> - 10:25, 11:1  
**By** <sup>[1]</sup> - 16:6  
**by** <sup>[28]</sup> - 1:24, 4:20, 6:8, 8:3, 8:12, 11:17, 12:19, 15:19, 16:25, 17:1, 18:13, 23:1, 29:15, 30:8, 30:9, 31:20, 33:15, 36:22, 38:9, 39:1, 41:10, 41:24, 43:17, 45:2, 48:7, 51:17, 55:3, 63:5

## C

**C** <sup>[1]</sup> - 3:1  
**calculated** <sup>[2]</sup> - 29:20, 38:5  
**calendar** <sup>[1]</sup> - 65:21  
**Call** <sup>[1]</sup> - 3:2  
**call** <sup>[1]</sup> - 39:1  
**called** <sup>[4]</sup> - 3:15, 31:21, 32:10, 32:11  
**calls** <sup>[1]</sup> - 25:18  
**Calls** <sup>[1]</sup> - 31:16  
**Camber** <sup>[2]</sup> - 9:3, 9:14  
**came** <sup>[5]</sup> - 5:3, 9:9, 16:19, 26:9, 38:5  
**can** <sup>[48]</sup> - 3:7, 8:16, 10:6, 10:13, 12:12, 13:23, 17:18, 18:22, 20:5, 23:17, 24:1, 25:1, 25:23, 26:4, 27:14, 32:7, 36:9, 37:9, 39:2, 39:4, 39:6, 39:7, 39:9, 39:10, 39:11, 39:16, 41:5, 41:22, 43:9, 45:5, 48:9, 50:14, 51:3, 53:14, 56:14, 57:13, 57:18, 58:2, 58:10, 58:12, 59:23, 60:2, 62:3, 62:9, 63:23, 65:22  
**can't** <sup>[12]</sup> - 17:7, 19:15, 20:2, 25:23, 25:24, 26:3, 35:10, 36:12, 46:5, 46:8, 47:18, 47:20  
**candor** <sup>[1]</sup> - 50:21  
**cannot** <sup>[5]</sup> - 10:3, 17:21, 18:3, 25:14, 25:15  
**capture** <sup>[2]</sup> - 9:14, 9:17  
**CARA** <sup>[1]</sup> - 1:21  
**carbon** <sup>[2]</sup> - 9:14, 9:17  
**carbon-capture** <sup>[1]</sup> - 9:14  
**care** <sup>[1]</sup> - 4:23  
**careless** <sup>[1]</sup> - 10:9  
**CARTER** <sup>[12]</sup> - 1:14, 28:11, 39:25, 44:6, 44:9, 44:16, 44:19, 46:13, 46:20, 47:22, 48:5, 48:8  
**Carter** <sup>[7]</sup> - 3:15, 28:9, 28:13, 39:23,



43:23, 46:11, 47:9  
**carve** [1] - 50:9  
**carve-out** [1] - 50:9  
**case** [53] - 3:17, 4:4, 4:7, 4:9, 4:11, 4:13, 4:14, 5:19, 7:11, 15:6, 18:23, 19:23, 20:4, 26:3, 31:4, 31:13, 32:3, 38:3, 40:4, 41:10, 41:11, 41:17, 41:24, 42:2, 42:11, 42:14, 42:16, 43:8, 46:2, 46:11, 46:14, 46:15, 47:3, 49:1, 49:18, 49:22, 49:25, 50:2, 50:8, 52:3, 53:2, 53:11, 54:5, 54:11, 54:14, 55:7, 60:4, 60:25, 64:12, 64:20, 64:21, 64:23, 65:15  
**case-in-chief** [1] - 64:20  
**cases** [1] - 65:1  
**cashing** [1] - 32:17  
**categories** [2] - 11:18, 11:21  
**cause** [13] - 27:15, 27:16, 29:2, 31:10, 35:3, 35:11, 35:12, 40:4, 40:16, 41:10, 42:10, 50:16, 63:21  
**caution** [1] - 7:4  
**cautioning** [1] - 7:9  
**CEI** [2] - 9:7, 9:8  
**certain** [5] - 24:21, 41:12, 51:21, 56:3, 63:24  
**certainly** [8] - 5:18, 6:1, 6:2, 9:13, 35:19, 35:22, 45:16, 50:5  
**CERTIFICATE** [1] - 66:3  
**certify** [1] - 66:5  
**challenge** [1] - 41:14  
**chance** [3] - 18:8, 57:6, 63:10  
**change** [1] - 9:18  
**changed** [2] - 3:19, 15:7  
**changes** [1] - 3:20  
**characterization** [1] - 38:22  
**charge** [6] - 8:5, 12:8, 17:1, 18:22, 50:23, 51:1  
**charged** [4] - 18:24, 18:25, 19:3, 57:20  
**charges** [2] - 49:2, 50:1  
**chart** [1] - 13:20  
**checked** [1] - 19:18  
**checking** [1] - 44:2  
**chief** [1] - 64:20  
**Chief** [2] - 38:4, 39:10  
**chip** [1] - 60:20  
**choose** [1] - 43:15  
**chosen** [1] - 10:11  
**chummy** [1] - 5:7  
**circle** [1] - 42:25  
**circuit** [2] - 13:23, 17:25  
**Circuit** [1] - 21:25  
**circumnavigate** [2] - 42:8, 43:12  
**circumstances** [1] - 56:3  
**citations** [1] - 30:12  
**cited** [1] - 38:2  
**civil** [5] - 35:15, 35:16, 36:10, 39:16, 50:15  
**claim** [4] - 16:16, 26:13, 30:23, 50:22  
**claims** [2] - 16:12, 29:15

**clarify** [2] - 47:22, 61:24  
**clean** [1] - 59:24  
**clear** [7] - 18:5, 18:19, 18:20, 27:21, 52:10, 57:17, 59:19  
**clearly** [4] - 38:10, 38:14, 38:23, 46:2  
**client** [30] - 4:25, 5:21, 6:15, 8:3, 8:13, 8:25, 9:9, 9:19, 9:25, 11:21, 11:23, 14:11, 14:25, 15:15, 15:25, 16:13, 16:20, 17:3, 24:14, 24:19, 25:12, 25:18, 45:24, 50:6, 50:7, 51:3, 57:18, 59:24, 61:12  
**client's** [2] - 5:14, 24:4  
**clients** [3] - 7:4, 26:14, 61:15  
**climate** [1] - 9:18  
**close** [3] - 5:4, 10:18, 10:24  
**closely** [1] - 3:23  
**closer** [1] - 7:21  
**co** [1] - 57:21  
**co-conspirators** [1] - 57:21  
**codefendant** [1] - 51:25  
**cognizant** [1] - 53:14  
**coin** [2] - 32:10, 32:11  
**collapsed** [1] - 32:14  
**colleague** [2] - 5:5, 27:7  
**color** [1] - 61:5  
**column** [2] - 12:19, 15:1  
**come** [3] - 17:7, 43:13, 65:14  
**comes** [4] - 7:11, 9:24, 10:9, 20:3  
**comingled** [2] - 35:9, 37:18  
**commentary** [1] - 33:21  
**commenting** [1] - 33:22  
**commit** [4] - 12:18, 12:25, 15:15, 16:14  
**committee** [1] - 21:5  
**communicate** [2] - 5:25, 51:21  
**communicated** [1] - 14:18  
**communication** [2] - 5:4, 14:11  
**communications** [5] - 5:5, 6:2, 6:13, 15:4, 49:8  
**companies** [1] - 55:9  
**company** [2] - 9:15, 34:1  
**compared** [1] - 23:11  
**compiling** [1] - 57:16  
**complaint** [3] - 10:4, 36:11, 39:16  
**completely** [2] - 31:12, 32:14  
**complex** [3] - 49:22, 50:2, 50:9  
**complexity** [1] - 49:3  
**complicated** [2] - 54:11, 54:18  
**computer** [2] - 1:25, 28:18  
**computers** [1] - 14:2  
**conceal** [1] - 21:20  
**concealed** [1] - 20:7  
**concealing** [1] - 22:24  
**concealment** [1] - 35:21  
**conceals** [2] - 21:20, 22:4  
**concede** [1] - 34:22  
**conceded** [1] - 34:12  
**concedes** [1] - 34:18  
**concern** [3] - 7:5, 11:7, 49:12

**concerned** [1] - 45:19  
**concerning** [1] - 3:11  
**concerns** [1] - 49:13  
**concise** [1] - 65:19  
**conclusion** [1] - 16:20  
**conclusory** [4] - 29:5, 29:17, 29:22, 38:16  
**concur** [1] - 51:15  
**concurrence** [1] - 52:2  
**condition** [3] - 3:5, 5:20, 46:8  
**conditions** [3] - 4:2, 5:2, 47:13  
**conduct** [4] - 3:13, 16:23, 35:19, 42:18  
**conferences** [1] - 31:22  
**confidence** [1] - 22:7  
**confidential** [1] - 4:12  
**connected** [1] - 3:23  
**conspiracy** [17] - 8:5, 12:8, 12:25, 13:6, 13:17, 14:15, 15:23, 16:24, 17:1, 18:22, 18:24, 19:5, 19:9, 46:23, 49:15, 50:23, 58:13  
**conspirators** [1] - 57:21  
**conspired** [3] - 12:18, 15:15, 16:14  
**Constantin** [3] - 22:10, 23:2, 23:5  
**Constantinescu** [14] - 3:24, 4:5, 5:6, 5:9, 6:9, 10:15, 12:22, 13:1, 13:9, 13:14, 14:11, 21:1, 21:8, 23:9  
**CONSTANTINESCU** [5] - 1:7, 1:21, 6:16, 6:23, 7:2  
**Constantinescu's** [4] - 3:5, 3:13, 22:15, 48:18  
**constantly** [1] - 33:5  
**constitutes** [1] - 22:3  
**Constitution** [1] - 8:1  
**constitutional** [1] - 25:14  
**contact** [5] - 4:9, 5:16, 5:18, 7:6, 28:25  
**contest** [1] - 38:8  
**context** [3] - 5:12, 9:18, 9:22  
**continuance** [1] - 55:2  
**continue** [1] - 52:24  
**continued** [1] - 46:16  
**contradicts** [1] - 24:9  
**contributing** [1] - 34:9  
**conversation** [1] - 4:25  
**conviction** [1] - 43:10  
**Cooperman** [1] - 60:21  
**coordination** [1] - 19:5  
**copy** [1] - 44:7  
**CORDOVA** [7] - 52:15, 54:21, 56:2, 56:13, 57:2, 57:8, 59:18  
**Cordova** [4] - 52:16, 54:19, 54:22, 58:12  
**core** [1] - 55:7  
**correct** [3] - 10:23, 41:7, 66:5  
**correctly** [1] - 5:13  
**could** [9] - 10:8, 20:9, 20:16, 23:4, 42:1, 44:23, 46:19, 49:3, 49:20  
**counsel** [6] - 4:5, 49:12, 49:24, 52:15, 52:25, 62:12  
**count** [4] - 9:2, 10:7, 49:15, 58:13

**counter** [1] - 43:3  
**counter-replied** [1] - 43:3  
**counting** [1] - 51:23  
**counts** [7] - 7:17, 8:7, 8:14, 17:3, 19:3, 20:25, 65:13  
**couple** [4] - 38:3, 40:1, 43:22, 57:8  
**course** [9] - 9:14, 17:25, 22:2, 27:25, 31:8, 37:20, 53:10, 53:25, 58:18  
**court** [3] - 3:2, 32:21, 62:2  
**COURT** [85] - 1:1, 3:3, 3:9, 4:15, 4:24, 5:11, 5:24, 6:15, 6:20, 6:24, 7:3, 7:21, 14:4, 17:15, 23:19, 23:22, 24:5, 26:10, 26:18, 26:20, 26:22, 26:25, 27:3, 27:6, 27:9, 27:11, 27:18, 27:20, 28:9, 28:17, 28:20, 33:10, 36:19, 36:23, 36:25, 37:5, 37:12, 39:23, 43:22, 44:8, 44:14, 44:18, 44:20, 44:25, 45:18, 46:11, 46:18, 47:5, 48:3, 48:6, 48:11, 49:12, 50:12, 50:24, 51:13, 52:7, 52:12, 52:19, 53:13, 53:23, 54:1, 54:4, 54:8, 54:19, 55:21, 56:10, 56:23, 57:5, 58:4, 58:7, 58:10, 58:18, 59:3, 59:8, 59:11, 59:17, 60:4, 62:12, 64:3, 64:15, 64:18, 64:23, 64:25, 65:17, 65:23  
**Court** [33] - 2:9, 2:9, 2:10, 8:17, 12:5, 15:10, 17:20, 28:14, 28:15, 39:17, 40:5, 41:15, 41:22, 41:23, 43:4, 43:17, 46:17, 47:23, 48:10, 50:9, 50:25, 51:11, 61:5, 61:8, 61:11, 62:8, 62:15, 63:23, 65:18, 66:4, 66:8  
**Court's** [2] - 14:3, 47:20  
**courthouse** [1] - 45:3  
**courtroom** [2] - 40:19, 48:20  
**covered** [2] - 30:16, 30:17  
**COVID** [1] - 34:2  
**created** [1] - 13:18  
**credible** [1] - 43:14  
**crime** [1] - 54:2  
**criminal** [3] - 4:9, 9:22, 53:19  
**Criminal** [2] - 1:18, 7:25  
**critical** [1] - 15:12  
**CRR** [2] - 2:9, 66:4  
**CSR** [2] - 2:9, 66:4  
**current** [3] - 9:16, 27:20, 65:21  
**curve** [1] - 60:23  
**custody** [2] - 28:5, 28:8

## D

**D** [1] - 3:1  
**DatChat** [1] - 10:7  
**date** [13] - 18:19, 50:10, 51:17, 52:10, 53:1, 53:5, 53:11, 55:1, 59:13, 60:12, 61:16, 61:25, 64:6  
**dates** [1] - 33:4  
**dating** [1] - 16:7  
**DATS** [9] - 10:19, 11:4, 20:25, 21:12, 21:18, 22:10, 22:14, 22:16, 23:10  
**day** [17] - 9:8, 10:18, 10:21, 13:7, 22:9, 23:21, 25:3, 25:8, 25:10, 30:19, 31:20,

32:12, 64:15  
**Day** [1] - 65:22  
**days** [7] - 4:4, 10:23, 10:25, 25:24, 57:15, 59:14, 64:15  
**DC** [1] - 1:19  
**deadline** [3] - 60:8, 62:4, 64:6  
**deadlines** [1] - 60:15  
**deal** [1] - 34:8  
**dealer** [1] - 34:17  
**dealing** [2] - 7:17, 51:5  
**dealt** [3] - 4:22, 4:24, 5:22  
**death** [1] - 60:25  
**December** [3] - 4:21, 20:19, 41:18  
**decide** [2] - 60:5, 63:18  
**Deel** [4] - 13:2, 13:14, 30:9, 55:3  
**Deel's** [2] - 30:13, 52:25  
**deem** [1] - 26:8  
**deeply** [1] - 51:10  
**defect** [1] - 11:12  
**defend** [4] - 34:13, 56:17, 58:1, 59:22  
**DEFENDANT** [5] - 1:21, 2:1, 6:16, 6:23, 7:2  
**defendant** [16] - 4:9, 12:19, 12:20, 13:21, 18:13, 28:11, 40:6, 40:20, 41:7, 41:18, 47:10, 47:11, 48:7, 52:13, 52:15, 56:24  
**defendant's** [2] - 18:16, 47:5  
**defendants** [25] - 7:5, 7:7, 7:9, 12:7, 12:18, 12:25, 19:1, 20:7, 20:9, 20:14, 20:15, 20:16, 20:19, 43:12, 46:21, 48:15, 48:19, 49:2, 50:1, 53:6, 55:3, 60:10, 61:13, 64:1, 64:21  
**defendants'** [1] - 49:13  
**defense** [14] - 4:5, 7:4, 40:2, 41:6, 41:13, 42:3, 42:8, 42:17, 43:18, 47:25, 49:24, 53:10, 58:20, 60:17  
**deference** [1] - 60:22  
**definition** [1] - 38:9  
**defraud** [5] - 18:25, 22:5, 54:12, 54:14, 54:17  
**delayed** [1] - 28:23  
**demand** [1] - 39:18  
**demands** [1] - 64:13  
**demonstrate** [1] - 23:15  
**demonstrates** [1] - 38:23  
**denial** [1] - 33:10  
**deny** [1] - 26:10  
**Department** [1] - 1:18  
**depreciate** [1] - 46:17  
**depreciation** [1] - 46:16  
**describe** [1] - 18:11  
**described** [3] - 6:7, 9:4, 9:5  
**describes** [2] - 19:21, 20:3  
**deserve** [2] - 17:5, 17:7  
**designated** [3] - 49:22, 50:2, 50:9  
**detail** [2] - 20:11, 55:6  
**determination** [2] - 38:10, 50:1  
**determining** [1] - 42:15  
**did** [27] - 7:13, 7:14, 9:10, 9:11, 10:15,

10:18, 10:24, 11:12, 11:25, 13:6, 13:17, 14:7, 30:1, 31:12, 33:8, 34:2, 36:17, 38:7, 47:23, 50:17, 52:13, 52:17, 56:8, 61:20, 62:22, 65:4  
**didn't** [10] - 6:11, 11:25, 14:20, 31:13, 33:1, 36:25, 40:7, 44:21, 45:13, 61:18  
**difference** [1] - 55:15  
**different** [7] - 11:25, 17:21, 26:15, 33:18, 55:19, 62:25, 64:12  
**difficult** [1] - 53:12  
**difficulty** [1] - 53:9  
**digging** [2] - 57:13, 57:15  
**Digital** [1] - 32:10  
**dime** [1] - 28:16  
**dip** [2] - 10:9, 16:9  
**direct** [5] - 14:18, 14:21, 14:24, 19:6, 19:7  
**directly** [2] - 3:16, 15:11  
**disagree** [4] - 54:3, 54:4, 63:23, 64:1  
**disagreement** [1] - 10:12  
**disclaimed** [1] - 31:17  
**disclaiming** [1] - 32:23  
**disclose** [1] - 32:5  
**disclosed** [2] - 24:6, 64:10  
**discloses** [1] - 51:19  
**disclosing** [1] - 18:12  
**disclosure** [5] - 18:7, 52:23, 52:24, 58:5, 59:16  
**disclosures** [2] - 53:7, 58:25  
**Discord** [3] - 18:13, 31:2, 59:21  
**discourse** [1] - 34:10  
**discovery** [8] - 13:24, 48:10, 53:2, 53:20, 54:18, 58:11, 58:17, 62:25  
**discussed** [1] - 31:5  
**discussing** [1] - 5:23  
**dismiss** [8] - 50:16, 50:20, 53:17, 55:8, 55:14, 62:8, 63:6, 63:10  
**disparaged** [1] - 3:23  
**disparages** [1] - 4:6  
**dispose** [4] - 19:12, 24:17, 47:18, 47:20  
**dispositive** [5] - 51:17, 51:22, 52:4, 53:17, 62:2  
**dispute** [2] - 38:20, 42:5  
**disregard** [5] - 38:1, 38:13, 38:23, 45:8, 45:17  
**distinction** [1] - 55:22  
**district** [1] - 41:24  
**District** [4] - 2:10, 2:10, 66:4  
**DISTRICT** [3] - 1:1, 1:1, 1:11  
**DIVISION** [1] - 1:2  
**do** [60] - 5:1, 5:5, 5:16, 5:22, 7:1, 7:7, 7:10, 11:12, 11:23, 11:25, 13:23, 15:3, 18:23, 20:2, 22:13, 22:18, 23:22, 24:3, 24:5, 24:6, 28:6, 29:11, 31:22, 31:24, 33:12, 33:23, 34:10, 35:5, 37:20, 40:15, 42:18, 42:19, 44:5, 49:10, 49:12, 50:3, 50:19, 51:8, 51:13, 52:2, 53:4, 53:14, 54:15, 55:2, 57:23, 58:3, 59:24, 61:11, 61:14, 61:15, 62:1, 62:3, 62:7, 62:10,



62:11, 63:19, 63:23, 66:5  
**document** [1] - 13:24  
**Document** [1] - 18:10  
**documents** [1] - 59:20  
**does** [26] - 4:13, 6:15, 12:1, 15:2, 15:3, 16:22, 21:8, 21:20, 21:22, 22:12, 22:18, 23:12, 25:14, 26:13, 28:3, 28:15, 32:24, 34:7, 38:20, 41:3, 43:4, 43:17, 46:3, 46:12, 57:3, 65:7  
**doesn't** [5] - 24:6, 36:22, 39:8, 49:17, 49:19  
**doing** [8] - 9:21, 21:8, 24:7, 24:9, 26:14, 30:21, 52:24, 65:3  
**dollars** [3] - 10:17, 10:22, 32:15  
**dollars'** [2] - 10:19, 36:3  
**don't** [64] - 6:11, 7:7, 7:10, 8:15, 11:19, 14:2, 15:1, 15:5, 24:8, 25:22, 25:25, 26:25, 27:11, 34:8, 34:13, 34:19, 35:3, 36:7, 37:2, 37:3, 37:25, 43:25, 44:1, 45:13, 45:25, 46:18, 49:3, 49:9, 49:16, 49:19, 49:22, 50:2, 50:5, 50:7, 50:16, 52:18, 53:3, 54:25, 56:4, 56:16, 56:17, 56:21, 57:3, 57:22, 57:24, 58:2, 58:24, 59:22, 61:4, 61:8, 62:3, 62:12, 62:14, 62:16, 62:24, 63:14, 63:17, 63:21, 63:23, 64:1, 65:1, 65:20  
**done** [11] - 8:19, 12:4, 27:12, 30:2, 36:13, 39:13, 47:3, 54:2, 59:18, 60:9, 61:15  
**down** [7] - 6:17, 7:6, 24:12, 25:4, 25:21, 31:5, 32:6  
**dropped** [1] - 25:4  
**drug** [1] - 34:17  
**drum** [1] - 22:16  
**dual** [2] - 18:22, 63:3  
**dual-track** [1] - 63:3  
**due** [2] - 24:4, 25:15  
**duly** [1] - 14:5  
**dumb** [1] - 3:15  
**dump** [8] - 12:10, 12:17, 13:1, 13:11, 15:23, 16:14, 33:20, 49:6  
**dumping** [4] - 20:16, 21:10, 33:5, 56:1  
**during** [10] - 8:4, 12:20, 13:3, 13:15, 14:15, 15:22, 16:12, 18:17, 18:19, 34:2  
**Durst** [1] - 60:25  
**duty** [8] - 26:6, 31:15, 31:17, 31:19, 32:20, 32:21, 32:23, 61:15

## E

**E** [2] - 3:1  
**E\*TRADE** [1] - 44:11  
**each** [7] - 12:17, 12:19, 13:21, 18:16, 49:8, 56:24, 56:25  
**earlier** [7] - 9:12, 26:9, 50:13, 55:18, 56:24, 57:17, 60:9  
**earned** [3] - 29:7, 29:16, 30:5  
**earning** [1] - 34:25  
**east** [2] - 65:7, 65:8  
**easy** [5] - 18:2, 18:6, 19:12, 38:12,

59:14  
**economy** [1] - 49:18  
**edited** [1] - 30:23  
**educate** [1] - 62:14  
**EDWARD** [2] - 1:7, 1:21  
**effect** [1] - 47:8  
**effectively** [4] - 22:4, 37:7, 37:8, 37:11  
**efficiency** [1] - 62:9  
**eight** [8] - 12:9, 12:25, 13:5, 13:10, 13:16, 14:18, 53:10, 58:20  
**either** [4] - 10:3, 40:22, 49:17, 49:18  
**element** [4] - 8:10, 11:14, 11:15, 16:16  
**Elon** [1] - 9:16  
**else** [5] - 21:16, 52:2, 57:19, 62:13, 64:3  
**encourage** [1] - 21:15  
**end** [4] - 43:8, 43:9, 46:14, 65:3  
**ended** [1] - 37:8  
**ending** [1] - 47:6  
**ends** [1] - 47:8  
**Energy** [2] - 9:3, 9:14  
**engage** [1] - 43:17  
**engaged** [2] - 13:11, 13:17  
**enough** [1] - 56:25  
**ensure** [1] - 4:12  
**enter** [4] - 24:16, 47:7, 48:3, 64:5  
**entertain** [1] - 12:5  
**entire** [1] - 32:17  
**entirely** [3] - 23:1, 29:5, 30:14  
**entirety** [7] - 14:16, 15:24, 16:11, 16:23, 30:6, 38:5, 38:16  
**entitled** [4] - 39:8, 39:13, 39:19, 66:6  
**envelope** [1] - 59:9  
**episodes** [1] - 33:4  
**equally** [1] - 53:11  
**equitable** [3] - 41:15, 41:21, 42:13  
**ERIC** [1] - 2:1  
**Eric** [1] - 27:8  
**error** [2] - 30:25, 51:24  
**escalation** [1] - 3:12  
**especially** [5] - 58:13, 58:19, 62:1, 62:4, 64:13  
**essential** [1] - 8:10  
**essentially** [7] - 11:14, 34:12, 44:9, 50:13, 54:1, 63:20, 65:13  
**establish** [1] - 54:9  
**established** [2] - 18:6, 41:24  
**establishes** [1] - 32:23  
**estimate** [1] - 64:11  
**evaluate** [1] - 63:2  
**even** [17] - 4:9, 16:6, 20:11, 24:17, 26:13, 31:1, 33:17, 34:8, 34:18, 34:19, 35:8, 37:19, 38:7, 54:13, 57:22, 58:2, 62:18  
**eventually** [2] - 28:24, 65:9  
**ever** [4] - 14:25, 25:23, 33:14, 56:14  
**every** [5] - 14:10, 18:18, 19:8, 33:13, 53:2  
**everybody** [4] - 25:10, 40:19, 52:1,

57:19  
**everyone** [1] - 21:16  
**everything** [8] - 35:9, 36:17, 37:19, 50:17, 53:4, 62:17, 62:20, 62:22  
**evidence** [13] - 15:15, 17:22, 17:23, 18:4, 18:20, 18:21, 18:22, 19:3, 19:5, 19:9, 38:5, 38:22, 57:16  
**evident** [1] - 54:14  
**exact** [1] - 22:12  
**exactly** [6] - 10:2, 18:11, 19:19, 20:3, 23:15, 47:24  
**examining** [1] - 32:3  
**example** [11] - 8:22, 10:6, 13:8, 16:19, 23:16, 24:16, 25:1, 29:25, 33:20, 55:9, 56:18  
**examples** [2] - 20:21, 23:13  
**Excel** [4] - 14:1, 14:6, 14:9, 14:22  
**except** [2] - 3:12, 52:25  
**excess** [1] - 47:19  
**excised** [1] - 11:14  
**excited** [1] - 25:19  
**exclusive** [1] - 45:2  
**executed** [1] - 41:3  
**Exhibit** [1] - 18:9  
**exhibits** [1] - 34:3  
**experience** [2] - 9:21, 61:14  
**experts** [3] - 51:19, 51:20  
**explain** [1] - 15:3  
**explained** [1] - 16:8  
**explaining** [1] - 29:14  
**explanations** [1] - 17:22  
**explicitly** [1] - 42:3  
**extensive** [1] - 46:15  
**extent** [8] - 5:20, 6:4, 6:10, 15:6, 17:6, 23:25, 37:9, 63:24  
**extremely** [2] - 6:18, 29:22

## F

**F** [1] - 10:10  
**face** [3] - 8:18, 9:20, 10:3  
**fact** [14] - 4:5, 10:24, 16:6, 22:4, 23:10, 25:12, 30:11, 31:5, 52:13, 55:19, 60:2, 62:16, 63:16, 63:17  
**fact-based** [1] - 62:16  
**facts** [2] - 39:20, 63:23  
**factual** [6] - 11:11, 29:6, 54:17, 55:6, 55:7, 63:13  
**fail** [1] - 42:13  
**fails** [3] - 35:16, 36:4, 40:14  
**fair** [2] - 46:21, 53:3  
**fairly** [1] - 52:9  
**fall** [3] - 7:12, 51:18, 52:4  
**false** [48] - 8:10, 8:18, 9:4, 9:5, 9:20, 11:6, 11:10, 11:19, 11:22, 12:3, 13:22, 15:1, 15:3, 15:16, 16:17, 16:20, 17:4, 17:6, 18:12, 18:14, 19:1, 19:22, 19:24, 20:1, 20:4, 20:6, 21:25, 22:2, 25:6, 30:9, 30:10, 30:12, 30:22, 33:14, 54:16, 55:12, 55:17, 56:14, 57:11, 57:25, 58:8,

59:6, 59:25, 60:2, 60:6, 65:8  
**falsely** [1] - 18:19  
**falsities** [1] - 65:10  
**falsity** [10] - 8:21, 10:2, 11:11, 15:2, 19:16, 19:19, 20:12, 20:18, 31:11, 56:6  
**familiar** [1] - 22:2  
**fans** [1] - 16:6  
**far** [4] - 5:6, 44:16, 54:9, 56:21  
**farfetched** [1] - 34:25  
**Farmer** [11] - 39:1, 39:5, 41:11, 41:25, 42:1, 42:7, 42:12, 43:7, 43:19, 45:1, 45:6  
**fashion** [1] - 5:8  
**FBI** [2] - 28:25, 29:19  
**Federal** [1] - 7:25  
**federal** [1] - 65:2  
**feel** [3] - 5:21, 50:19, 61:4  
**feeling** [1] - 52:7  
**few** [2] - 52:21, 57:2  
**fide** [1] - 26:5  
**fiduciary** [2] - 26:6, 32:20  
**Fifth** [1] - 21:25  
**fight** [3] - 23:23, 35:4, 39:16  
**figure** [9] - 19:15, 28:24, 32:25, 33:13, 34:11, 38:23, 44:20, 45:11, 59:14  
**file** [2] - 36:10, 63:9  
**filed** [6] - 3:12, 7:15, 29:5, 48:16, 51:17, 54:23  
**filing** [1] - 32:6  
**filings** [1] - 30:18  
**FILIPPELLI** [1] - 1:21  
**final** [1] - 59:1  
**finally** [2] - 28:25, 38:25  
**finance** [1] - 31:21  
**financial** [1] - 40:23  
**finding** [3] - 42:10, 42:24, 53:11  
**fine** [1] - 41:11  
**finish** [2] - 11:19, 16:25  
**finished** [1] - 61:1  
**FinTwit** [1] - 21:5  
**fire** [1] - 3:15  
**firm** [1] - 52:11  
**firmly** [2] - 45:2, 45:4  
**first** [17] - 8:23, 9:2, 10:20, 11:7, 12:22, 13:4, 14:6, 15:19, 16:1, 17:6, 24:13, 27:6, 28:22, 40:2, 40:9, 57:8, 65:18  
**First** [3] - 33:23, 56:15, 56:18  
**five** [8] - 8:6, 8:13, 10:23, 17:3, 25:24, 26:1, 27:17, 45:14  
**floor** [1] - 39:5  
**Floor** [1] - 2:2  
**flowing** [2] - 58:11, 58:16  
**flows** [1] - 44:13  
**focused** [1] - 17:2  
**focuses** [1] - 30:8  
**follow** [1] - 40:7  
**followers** [5] - 21:23, 22:24, 23:7, 30:15, 55:23  
**following** [1] - 10:21

**for** [103] - 3:8, 3:12, 6:14, 8:14, 8:17, 10:7, 10:13, 13:7, 14:23, 14:24, 16:1, 16:5, 16:7, 16:9, 16:19, 17:3, 17:15, 18:16, 20:25, 22:16, 23:5, 23:10, 23:16, 24:9, 24:11, 24:16, 25:4, 25:16, 26:1, 26:2, 28:13, 29:1, 29:6, 29:9, 29:23, 31:24, 32:25, 33:20, 34:4, 36:25, 37:23, 38:1, 38:13, 38:23, 39:6, 39:14, 40:10, 40:14, 40:15, 41:8, 41:16, 42:2, 42:7, 42:22, 43:7, 43:13, 45:7, 45:8, 45:17, 46:4, 46:13, 47:24, 48:23, 49:1, 49:17, 49:18, 50:9, 50:11, 50:14, 50:25, 52:15, 52:25, 53:4, 53:7, 53:20, 54:24, 55:9, 55:14, 55:21, 56:18, 56:25, 57:16, 57:22, 60:5, 60:13, 60:16, 60:20, 61:7, 61:11, 61:12, 61:23, 62:4, 62:8, 62:9, 64:11, 64:23, 65:2  
**FOR** [3] - 1:14, 1:21, 2:1  
**FORD** [18] - 1:21, 4:16, 4:25, 5:12, 6:1, 7:15, 7:23, 14:5, 23:21, 23:25, 24:8, 26:16, 26:19, 27:10, 48:22, 49:21, 50:20, 50:25  
**Ford** [22] - 1:22, 4:15, 7:13, 17:18, 18:20, 19:14, 19:25, 23:2, 23:19, 26:11, 27:11, 32:20, 40:11, 49:13, 50:13, 51:15, 53:14, 54:1, 55:17, 56:23, 60:13, 61:13  
**Ford's** [3] - 23:9, 31:8, 62:19  
**foregoing** [1] - 66:5  
**forfeitable** [2] - 41:19, 43:6  
**forfeiture** [4] - 35:15, 35:16, 36:10, 39:16  
**form** [1] - 6:24  
**former** [1] - 5:4  
**forth** [1] - 30:3  
**fortunately** [1] - 42:17  
**fortune** [1] - 46:22  
**forward** [1] - 62:9  
**found** [4] - 40:4, 41:9, 42:22, 47:10  
**four** [3] - 9:3, 19:24  
**fourth** [1] - 44:21  
**frank** [1] - 48:14  
**Franklin** [1] - 2:2  
**frankly** [6] - 43:13, 46:17, 47:4, 60:6, 61:14, 62:15  
**Franks** [4] - 37:22, 37:23, 37:24, 42:17  
**Fraud** [1] - 1:18  
**fraud** [36] - 8:8, 8:13, 9:2, 9:21, 10:7, 11:16, 15:16, 16:16, 17:3, 22:1, 29:7, 29:14, 29:16, 29:20, 31:11, 32:14, 32:25, 33:6, 33:7, 33:19, 33:25, 34:9, 34:20, 35:1, 35:7, 35:10, 35:14, 37:15, 37:16, 38:11, 38:17, 40:24, 42:6, 45:11, 50:22, 54:12  
**fraudulent** [8] - 33:24, 35:3, 35:8, 36:1, 36:16, 38:7, 38:19, 40:12  
**fraudulently** [1] - 43:6  
**free** [3] - 5:24, 26:7, 51:7  
**free-market** [1] - 51:7  
**Freedman** [1] - 2:1

**freeze** [1] - 48:2  
**freezing** [2] - 47:7, 48:1  
**Friedland** [1] - 2:1  
**friend** [1] - 5:4  
**friendly** [1] - 5:8  
**friends** [1] - 5:15  
**from** [32] - 3:6, 6:21, 10:3, 15:23, 17:18, 17:20, 18:20, 22:1, 24:25, 28:9, 29:7, 32:15, 33:6, 34:14, 37:3, 37:11, 39:23, 43:13, 44:11, 46:2, 46:9, 48:10, 48:15, 48:19, 49:8, 49:20, 53:5, 55:5, 57:14, 62:1, 62:10, 66:6  
**front** [2] - 7:11, 23:24  
**frozen** [2] - 46:3, 46:7  
**fruits** [1] - 13:18  
**full** [3] - 25:4, 47:23, 63:25  
**fully** [1] - 56:4  
**fund** [2] - 31:22, 32:9  
**fundamental** [3] - 11:15, 16:15, 19:10  
**funded** [1] - 44:11  
**funds** [17] - 27:1, 29:10, 29:15, 29:24, 32:4, 34:19, 35:3, 39:2, 41:14, 41:19, 42:4, 42:6, 42:15, 43:6, 43:13, 45:5, 46:9  
**fungible** [1] - 36:9  
**further** [2] - 4:13  
**future** [6] - 8:24, 8:25, 10:6, 11:24, 31:18, 33:15

## G

**G** [1] - 3:1  
**gained** [2] - 33:19, 35:8  
**gains** [1] - 35:6  
**Galaxy** [1] - 32:10  
**Gates** [1] - 29:9  
**gave** [1] - 52:23  
**gears** [1] - 32:24  
**general** [2] - 11:18, 33:10  
**generally** [1] - 56:5  
**generic** [1] - 11:20  
**get** [37] - 4:13, 5:21, 15:12, 25:5, 26:18, 27:18, 29:19, 29:21, 32:25, 36:25, 37:2, 37:9, 38:18, 38:22, 39:2, 40:1, 40:18, 41:12, 42:9, 43:4, 45:5, 48:24, 54:9, 56:21, 56:25, 58:2, 58:22, 60:1, 60:9, 60:10, 60:18, 61:3, 63:1, 63:9, 63:10, 65:6  
**gets** [4] - 11:19, 20:22, 45:19, 53:7  
**getting** [3] - 11:7, 36:19, 47:14  
**give** [8] - 8:22, 10:6, 11:20, 15:3, 25:1, 33:10, 59:3, 63:10  
**given** [9] - 5:17, 8:20, 13:20, 49:1, 61:14, 64:8, 64:13, 64:16, 65:21  
**gives** [1] - 20:11  
**giving** [2] - 11:17, 65:17  
**global** [1] - 9:17  
**go** [26] - 3:9, 4:17, 7:10, 9:10, 9:11, 20:20, 21:7, 25:3, 25:8, 28:20, 30:17, 30:18, 31:22, 33:22, 39:1, 42:23, 43:9,

43:25, 45:13, 47:1, 49:14, 54:25, 57:18, 62:14, 63:18

**gobble** [1] - 10:9

**goes** [5] - 20:11, 22:9, 26:12, 51:7, 56:13

**going** [57] - 3:14, 6:14, 6:25, 7:5, 9:1, 9:7, 11:23, 12:13, 13:20, 16:13, 16:17, 19:4, 19:11, 21:6, 21:7, 21:13, 23:13, 23:14, 23:23, 24:12, 25:3, 25:8, 25:20, 25:21, 26:10, 27:18, 28:25, 40:16, 48:3, 48:6, 48:7, 49:7, 49:19, 51:20, 52:8, 55:18, 57:9, 57:10, 58:3, 58:4, 60:5, 60:7, 60:11, 61:9, 61:15, 62:17, 63:3, 63:5, 63:17, 63:18, 64:5, 65:6, 65:9

**Goldman** [1] - 30:16

**gone** [1] - 10:20

**good** [6] - 3:7, 26:12, 27:13, 31:25, 32:18, 34:22

**got** [15] - 6:18, 12:12, 25:19, 27:21, 27:22, 32:10, 33:6, 39:18, 57:19, 58:14, 58:15, 59:22, 61:2, 62:18, 63:6

**gotten** [1] - 48:14

**GOVERNMENT** [1] - 1:14

**government** [63] - 3:6, 5:10, 5:23, 6:4, 7:5, 8:9, 9:24, 10:11, 10:23, 11:12, 11:17, 11:24, 12:4, 12:8, 12:17, 13:23, 15:8, 16:12, 17:2, 17:7, 17:15, 23:19, 24:1, 24:19, 25:7, 25:16, 25:24, 25:25, 26:4, 26:13, 28:6, 28:9, 28:12, 28:13, 28:15, 30:3, 30:10, 32:25, 33:8, 33:19, 34:7, 34:18, 37:8, 37:24, 38:7, 38:20, 40:3, 41:3, 44:4, 45:12, 46:1, 46:4, 46:12, 46:13, 47:1, 47:23, 48:13, 50:18, 51:19, 55:5, 62:18, 63:10, 63:20

**government's** [18] - 3:4, 4:18, 12:13, 13:19, 15:11, 17:12, 28:7, 31:4, 34:11, 35:2, 36:16, 39:21, 48:10, 48:21, 52:7, 54:24, 60:22, 64:11

**grammatical** [1] - 30:25

**grand** [12] - 7:16, 9:5, 11:8, 11:9, 11:13, 15:13, 16:18, 17:8, 17:19, 18:2, 18:4, 57:12

**granting** [1] - 47:5

**great** [2] - 56:7, 56:8

**greatest** [2] - 40:22, 55:24

**greatness** [2] - 40:20, 46:19

**green** [2] - 9:15, 10:1

**grounds** [4] - 17:9, 29:9, 37:24, 65:14

**group** [3] - 14:17, 14:21, 14:23

**guess** [5] - 17:18, 30:24, 33:5, 45:24, 59:23

**guilty** [1] - 47:10

**guy** [2] - 34:15, 57:22

## H

**had** [30] - 4:17, 4:25, 7:13, 9:10, 14:11, 14:17, 14:20, 14:22, 15:17, 15:21, 16:7, 16:9, 16:13, 18:8, 19:16, 20:19, 28:15, 28:22, 30:25, 31:1, 31:2, 31:17, 32:16,

46:22, 48:12, 57:6, 57:7, 60:24

**hair** [1] - 3:15

**half** [6] - 10:17, 10:19, 11:2, 22:3, 22:22, 34:19

**hammering** [1] - 34:5

**handbook** [1] - 65:2

**handle** [1] - 27:8

**hands** [1] - 39:21

**HANEN** [1] - 1:10

**happen** [5] - 6:19, 26:16, 45:13, 53:4, 55:18

**happened** [5] - 6:10, 16:6, 32:13, 32:16, 32:18

**happening** [1] - 6:25

**happens** [4] - 4:10, 22:9, 31:20, 60:1

**happy** [4] - 23:16, 37:9, 37:10, 52:18

**harassed** [1] - 4:14

**hard** [2] - 47:24, 61:3

**HARLAN** [1] - 2:4

**has** [39] - 5:21, 6:10, 6:17, 9:25, 10:11, 11:17, 12:4, 14:25, 15:6, 16:4, 17:25, 19:9, 20:2, 21:4, 24:3, 24:5, 24:19, 25:8, 27:21, 28:2, 28:21, 32:18, 32:20, 32:21, 33:23, 34:17, 40:4, 41:8, 41:9, 41:18, 45:22, 46:10, 46:22, 48:13, 50:2, 55:11, 61:18, 62:1, 62:18

**hashtag** [1] - 16:4

**hasn't** [3] - 18:8, 28:22, 51:25

**have** [114] - 3:11, 4:8, 4:20, 5:5, 5:17, 7:3, 7:7, 7:13, 7:15, 8:2, 8:11, 8:14, 8:15, 10:12, 11:9, 11:10, 11:13, 12:6, 12:18, 13:11, 13:16, 13:18, 13:24, 15:5, 18:22, 19:4, 19:10, 20:19, 22:7, 23:16, 24:6, 24:18, 25:18, 25:25, 26:2, 26:13, 28:1, 28:3, 28:4, 28:7, 28:16, 30:2, 30:3, 31:24, 32:7, 35:4, 35:5, 35:16, 35:25, 36:2, 36:4, 36:11, 36:13, 36:22, 37:4, 37:10, 37:23, 38:14, 39:1, 39:17, 41:2, 41:3, 42:5, 42:10, 42:11, 42:12, 43:2, 44:7, 45:10, 46:1, 46:14, 46:21, 47:3, 47:11, 48:4, 48:15, 48:19, 48:20, 49:19, 49:23, 49:25, 50:5, 50:16, 51:20, 52:3, 52:5, 52:13, 53:3, 53:5, 53:6, 53:21, 54:13, 55:10, 55:23, 56:5, 56:17, 57:2, 57:12, 58:1, 58:11, 58:18, 58:20, 58:25, 59:1, 59:19, 61:7, 61:15, 63:21, 64:8, 65:9, 65:13, 65:20

**haven't** [8] - 35:19, 36:5, 36:13, 55:11, 57:5, 57:6, 63:7, 64:16

**having** [6] - 8:19, 13:23, 14:16, 46:4, 51:3, 56:4

**he** [103] - 3:15, 3:16, 4:6, 5:1, 5:15, 5:16, 5:17, 6:9, 9:7, 10:15, 10:16, 10:18, 10:19, 10:21, 10:24, 10:25, 11:23, 11:24, 12:23, 14:14, 14:17, 14:18, 14:20, 15:17, 15:21, 16:6, 16:8, 19:15, 20:1, 20:2, 21:9, 21:10, 21:11, 21:14, 21:16, 21:17, 21:18, 21:20, 21:21, 21:22, 22:7, 22:10, 22:12, 22:18, 22:20, 22:22, 23:3, 23:6, 23:10, 23:11,

24:20, 24:22, 24:24, 24:25, 28:21, 29:7, 30:1, 30:13, 30:15, 30:24, 30:25, 31:1, 31:2, 31:5, 31:12, 31:13, 31:18, 32:16, 32:18, 33:14, 33:19, 33:25, 34:4, 34:5, 34:16, 34:17, 34:22, 34:23, 35:6, 35:7, 35:22, 36:1, 36:22, 38:15, 40:21, 46:5, 46:8, 46:10, 47:3, 47:17, 47:20, 57:23, 59:25

**he's** [14] - 6:11, 9:1, 21:14, 21:24, 22:16, 22:25, 23:1, 23:21, 24:9, 24:22, 34:17, 40:23

**head** [1] - 54:11

**headed** [1] - 62:2

**heads** [1] - 65:17

**heads-up** [1] - 65:17

**hear** [1] - 6:24

**HEARD** [1] - 1:10

**heard** [5] - 40:10, 40:13, 62:1, 62:19, 65:22

**hearing** [16] - 8:4, 28:22, 37:23, 37:25, 39:8, 41:11, 42:1, 42:7, 42:12, 43:7, 43:19, 44:1, 52:10, 58:24, 62:23

**heart** [2] - 40:2, 52:22

**heavy** [1] - 49:9

**hedge** [3] - 31:21, 32:4, 32:9

**held** [8] - 10:16, 23:5, 23:9, 23:11, 32:21, 36:22, 45:5, 47:2

**help** [1] - 62:12

**helpful** [2] - 20:22, 62:15

**Hennessey** [3] - 13:2, 52:17, 54:23

**here** [34] - 3:3, 3:14, 7:4, 18:12, 23:16, 26:13, 27:15, 29:1, 31:9, 31:23, 36:11, 39:13, 40:16, 41:17, 41:21, 43:18, 44:11, 45:19, 48:20, 49:24, 51:16, 52:14, 53:1, 57:7, 57:18, 60:17, 62:12, 63:16, 65:3, 65:4, 65:6, 65:14, 65:22

**hereby** [1] - 66:5

**hey** [4] - 11:21, 11:23, 63:16, 63:21

**Hey** [2] - 9:24, 11:10

**HEYWARD** [1] - 1:14

**hid** [1] - 35:20

**hiding** [1] - 19:20

**higher** [3] - 20:10, 24:15, 56:4

**HILDER** [6] - 2:4, 26:24, 27:2, 27:4, 27:7, 51:14

**Hilder** [6] - 2:6, 26:23, 27:12, 51:13, 61:4, 61:25

**Hilder's** [1] - 61:12

**him** [10] - 5:17, 5:21, 5:24, 6:14, 9:3, 17:9, 21:23, 32:18, 40:22, 47:16

**hinges** [1] - 31:12

**hired** [1] - 61:15

**his** [31] - 3:22, 4:1, 5:1, 5:4, 5:21, 6:1, 6:5, 6:13, 9:12, 14:16, 16:23, 21:10, 21:14, 21:18, 21:22, 21:23, 22:23, 22:24, 23:7, 28:8, 30:6, 30:15, 31:16, 32:11, 35:21, 37:7, 41:19, 47:12, 61:12

**His** [2] - 61:18, 61:19

**history** [1] - 40:22

**hit** [2] - 24:20, 54:10

**hoes** [1] - 22:14  
**hold** [7] - 10:15, 20:15, 24:11, 25:15, 26:1, 26:2, 48:4  
**holding** [7] - 10:8, 10:21, 11:5, 21:15, 21:18, 22:6, 23:3  
**holdings** [1] - 32:5  
**honest** [1] - 40:7  
**Honor** [66] - 3:7, 3:10, 4:16, 6:16, 7:2, 12:15, 15:22, 17:5, 17:16, 17:17, 18:5, 18:8, 19:21, 20:20, 22:2, 23:13, 26:19, 27:10, 27:13, 27:24, 28:11, 28:21, 29:1, 29:10, 36:14, 37:19, 39:4, 39:25, 40:1, 43:11, 43:21, 44:6, 44:22, 46:7, 46:13, 46:25, 47:22, 48:8, 48:22, 49:21, 51:12, 52:8, 52:9, 52:16, 52:21, 53:16, 53:18, 54:10, 54:15, 54:21, 56:2, 57:14, 58:6, 58:16, 59:12, 59:18, 60:20, 61:9, 61:18, 61:19, 61:22, 61:23, 63:22, 64:16, 64:24, 65:11  
**Honor's** [2] - 52:9, 52:22  
**HONORABLE** [1] - 1:10  
**hoping** [1] - 14:1  
**hot** [1] - 9:15  
**hours** [1] - 23:10  
**house** [3] - 4:22, 4:24, 5:22  
**HOUSTON** [2] - 1:2, 1:6  
**Houston** [3] - 1:16, 2:7, 2:12  
**how** [19] - 11:7, 15:15, 16:18, 17:8, 19:10, 19:11, 19:15, 25:25, 29:14, 29:19, 36:19, 38:5, 40:5, 42:23, 49:12, 59:3, 59:4, 65:14  
**however** [2] - 29:10, 53:7  
**Hrvatín** [1] - 13:2  
**huge** [2] - 10:16, 32:9  
**hundred** [3] - 22:21, 22:22, 32:15  
**hundreds** [3] - 8:19, 10:4, 14:10

# I

**i** [1] - 46:18  
**I** [233] - 3:1, 3:4, 3:7, 4:20, 4:22, 4:25, 5:5, 5:16, 5:17, 5:19, 5:21, 5:22, 5:24, 6:8, 6:10, 6:16, 6:18, 6:24, 7:3, 7:6, 7:7, 7:14, 8:16, 8:17, 9:12, 10:3, 10:6, 10:8, 11:12, 11:19, 12:4, 12:11, 13:4, 13:23, 13:25, 14:1, 14:2, 14:19, 15:1, 15:5, 15:10, 16:18, 16:25, 17:5, 17:9, 17:12, 17:18, 19:12, 19:16, 19:17, 19:18, 20:24, 22:6, 23:16, 23:17, 24:8, 25:1, 25:18, 25:19, 25:21, 25:22, 25:25, 26:11, 26:18, 27:11, 28:6, 30:23, 31:24, 32:5, 32:15, 32:21, 33:5, 36:25, 37:2, 37:3, 37:22, 39:25, 40:2, 40:7, 42:9, 43:14, 43:25, 44:1, 44:7, 44:20, 44:21, 44:23, 45:19, 45:21, 45:24, 45:25, 46:2, 46:5, 46:20, 47:1, 48:9, 48:12, 48:14, 48:15, 48:22, 49:3, 49:5, 49:9, 49:12, 49:13, 49:14, 49:15, 49:16, 49:19, 49:20, 49:21, 49:22, 50:2, 50:5, 50:13, 50:14, 50:21, 50:25, 51:4, 51:5, 51:6,

51:8, 51:15, 51:24, 52:1, 52:4, 52:9, 52:17, 52:19, 53:13, 53:14, 53:16, 53:23, 54:4, 54:5, 54:10, 54:13, 55:18, 55:22, 55:23, 55:25, 56:2, 56:4, 56:21, 57:3, 57:5, 57:6, 57:7, 57:14, 57:15, 57:18, 57:22, 57:23, 58:12, 59:9, 59:18, 59:19, 59:22, 59:23, 59:24, 60:4, 60:16, 60:20, 60:25, 61:4, 61:7, 61:8, 61:11, 61:17, 61:18, 62:12, 62:13, 62:16, 62:17, 62:19, 62:23, 62:24, 62:25, 63:2, 63:4, 63:6, 63:7, 63:9, 63:12, 63:14, 63:17, 63:19, 63:22, 63:23, 64:1, 64:8, 64:16, 64:20, 64:25, 65:1, 65:11, 65:22, 66:4  
**I'd** [2] - 26:18, 60:9  
**I'll** [11] - 10:9, 33:10, 39:3, 40:7, 47:7, 48:14, 54:6, 60:15, 61:17, 63:8  
**I'm** [48] - 5:12, 6:5, 6:21, 6:25, 7:9, 10:8, 11:4, 17:11, 21:18, 22:6, 23:16, 26:10, 33:15, 34:4, 45:18, 47:5, 47:6, 47:16, 47:25, 48:3, 48:17, 51:18, 52:8, 52:12, 52:13, 52:15, 52:18, 53:13, 53:14, 54:22, 55:25, 56:1, 56:20, 60:7, 60:11, 60:12, 60:14, 60:15, 61:8, 62:23, 63:3, 63:5, 64:4, 65:5, 65:17  
**I've** [10] - 4:17, 16:25, 43:24, 47:18, 47:19, 57:19, 59:18, 59:22, 61:2, 65:21  
**idea** [1] - 45:1  
**ideas** [1] - 30:21  
**identified** [7] - 29:13, 29:14, 29:15, 35:18, 35:19, 45:11, 45:14  
**identify** [1] - 57:22  
**identifying** [1] - 18:12  
**idiots** [1] - 22:14  
**if** [58] - 4:10, 6:24, 9:2, 10:9, 11:12, 12:5, 12:11, 13:5, 14:22, 15:2, 15:9, 18:8, 18:25, 19:25, 20:21, 23:17, 25:18, 25:22, 27:10, 33:14, 35:6, 36:10, 37:4, 39:5, 39:11, 41:4, 41:12, 42:11, 43:18, 44:6, 44:7, 44:20, 44:23, 46:3, 46:11, 46:17, 46:18, 48:19, 48:22, 50:14, 52:3, 53:9, 53:14, 53:16, 54:5, 55:23, 56:16, 56:19, 57:3, 58:2, 60:9, 60:17, 60:20, 62:13, 63:6, 64:3  
**illegal** [1] - 26:14  
**illegitimate** [1] - 34:20  
**Illinois** [1] - 29:9  
**immediate** [1] - 13:4  
**immediately** [3] - 21:15, 22:18, 48:1  
**immense** [1] - 21:4  
**implicate** [1] - 40:16  
**importance** [1] - 21:4  
**important** [6] - 3:25, 30:4, 54:8, 55:14, 62:13, 63:1  
**impose** [1] - 24:14  
**imposes** [1] - 24:15  
**imposing** [1] - 25:17  
**in** [243] - 3:3, 3:14, 3:17, 3:23, 4:4, 4:6, 4:9, 4:10, 4:12, 4:13, 4:21, 4:22, 4:24, 5:3, 5:5, 5:7, 5:16, 5:19, 5:22, 6:8, 6:11,

6:17, 6:22, 6:24, 6:25, 7:11, 7:17, 8:11, 8:19, 9:4, 9:18, 9:21, 9:22, 9:24, 10:4, 10:14, 10:17, 10:20, 10:22, 10:24, 11:1, 11:2, 11:12, 11:24, 12:2, 12:6, 12:9, 12:13, 12:19, 12:25, 13:5, 13:8, 13:9, 13:11, 13:17, 13:19, 13:24, 14:9, 15:1, 15:6, 16:6, 17:25, 18:3, 18:14, 18:22, 19:2, 19:3, 19:7, 19:18, 19:23, 20:4, 20:13, 20:18, 20:21, 20:22, 20:25, 21:4, 21:6, 21:18, 21:21, 22:7, 23:8, 23:10, 23:24, 24:10, 25:1, 25:7, 25:9, 25:20, 25:23, 25:24, 26:5, 26:7, 27:4, 28:3, 28:5, 28:8, 29:7, 29:16, 29:20, 29:25, 30:11, 30:19, 30:25, 31:6, 31:16, 31:18, 31:20, 31:21, 31:24, 32:3, 32:22, 33:1, 33:6, 33:7, 33:15, 33:23, 33:25, 34:10, 34:13, 34:25, 35:7, 35:11, 35:12, 35:14, 35:20, 35:21, 35:23, 37:1, 37:5, 37:8, 37:15, 38:2, 38:17, 38:21, 39:15, 39:21, 39:23, 40:4, 40:6, 40:9, 40:10, 40:11, 40:12, 40:19, 40:21, 40:22, 40:24, 41:10, 41:11, 41:20, 41:24, 42:1, 42:3, 42:6, 42:10, 42:16, 43:14, 43:17, 44:4, 44:8, 45:3, 45:4, 45:12, 46:4, 46:14, 46:18, 46:22, 47:2, 47:6, 47:8, 47:9, 47:17, 47:19, 47:25, 48:1, 48:6, 48:20, 48:23, 49:10, 49:20, 50:21, 51:7, 51:13, 51:18, 51:24, 52:2, 52:4, 52:9, 52:23, 53:2, 53:10, 54:4, 54:11, 54:14, 54:17, 54:20, 54:23, 55:7, 55:15, 56:2, 56:6, 57:9, 57:13, 58:19, 58:24, 60:4, 60:17, 60:18, 60:23, 60:25, 61:5, 61:8, 61:9, 61:17, 61:24, 62:2, 63:9, 63:16, 63:19, 63:20, 63:24, 64:4, 64:11, 64:20, 64:21, 65:2, 65:5, 65:7, 65:8, 65:15, 66:6  
**in-house** [3] - 4:22, 4:24, 5:22  
**inaccurate** [2] - 31:12, 38:21  
**inception** [1] - 40:23  
**incessantly** [1] - 32:11  
**incidents** [1] - 6:7  
**include** [2] - 51:17, 58:25  
**included** [3] - 41:20, 42:24, 43:1  
**income** [1] - 34:18  
**incompetencies** [1] - 17:22  
**incorporate** [1] - 31:8  
**incorporated** [1] - 30:7  
**incorrect** [1] - 34:11  
**incorrectly** [1] - 6:9  
**increase** [1] - 25:20  
**incredible** [1] - 43:13  
**incredibly** [1] - 53:18  
**indefinite** [2] - 24:12, 25:16  
**indefinitely** [1] - 24:25  
**indicate** [1] - 9:20  
**indicates** [1] - 21:5  
**indict** [1] - 17:9  
**indictment** [26] - 4:22, 7:18, 7:20, 7:24, 8:12, 9:4, 12:2, 17:21, 18:15, 19:17, 19:18, 20:2, 20:19, 20:21, 20:25, 21:21, 30:7, 35:13, 39:15, 40:25, 41:8,

41:16, 41:22, 45:4, 53:17, 53:21  
**indictments** [1] - 41:20  
**individual** [5] - 5:6, 5:18, 12:17, 24:11, 65:14  
**individual's** [1] - 26:4  
**individuals** [6] - 6:12, 12:9, 13:5, 13:11, 13:16, 25:12  
**induce** [2] - 20:8, 20:14  
**indulge** [3] - 12:11, 15:10, 20:22  
**infirm** [1] - 7:25  
**infirmities** [1] - 18:3  
**influence** [1] - 45:21  
**inform** [1] - 63:24  
**information** [10] - 3:22, 4:4, 4:12, 8:15, 12:14, 19:2, 20:7, 24:18, 48:24, 63:2  
**inherent** [1] - 60:4  
**insider** [1] - 24:18  
**insiders** [3] - 24:16, 24:18, 51:8  
**instance** [2] - 46:4, 60:16  
**instances** [5] - 6:11, 8:7, 49:9, 54:4, 56:7  
**instruct** [1] - 6:12  
**instruction** [2] - 22:1, 28:8  
**instructions** [1] - 5:17  
**insufficiency** [1] - 42:21  
**insufficient** [1] - 42:22  
**intent** [7] - 8:25, 10:6, 20:7, 22:5, 37:25, 54:16, 65:10  
**intentional** [1] - 42:19  
**interdependent** [1] - 63:15  
**interesting** [1] - 13:13  
**interpret** [1] - 10:11  
**interrupt** [1] - 52:18  
**intimidate** [1] - 3:18  
**intimidated** [1] - 4:14  
**into** [11] - 17:1, 24:16, 30:8, 31:9, 40:1, 40:18, 40:21, 43:25, 44:13, 50:15, 52:5  
**intrinsic** [1] - 19:2  
**invade** [1] - 46:6  
**investigating** [1] - 51:10  
**investment** [3] - 31:17, 31:23, 32:23  
**investors** [3] - 20:8, 20:14, 65:15  
**involved** [3] - 12:9, 12:25, 40:24  
**involves** [1] - 54:16  
**is** [224] - 3:23, 3:25, 4:18, 5:3, 5:12, 5:14, 5:18, 5:23, 6:1, 7:10, 7:24, 8:3, 8:9, 8:12, 8:16, 8:18, 8:23, 8:25, 9:7, 9:8, 9:14, 9:15, 9:18, 9:19, 9:23, 10:2, 10:5, 10:14, 10:23, 10:25, 11:5, 11:7, 12:15, 12:17, 13:5, 13:9, 13:20, 14:6, 14:10, 14:19, 14:22, 15:1, 15:3, 15:9, 15:12, 15:24, 16:11, 16:15, 17:2, 17:8, 17:20, 18:2, 18:5, 18:6, 18:7, 18:18, 18:21, 19:2, 19:9, 19:12, 19:14, 19:15, 19:19, 19:20, 20:18, 20:24, 20:25, 21:6, 21:13, 21:25, 22:2, 22:3, 22:5, 22:15, 22:19, 23:8, 23:23, 24:10, 24:12, 24:22, 24:25, 25:3, 25:8, 25:17, 25:20, 25:22, 26:14, 27:20, 29:1, 29:2, 29:9, 30:1, 30:4, 30:7, 30:9, 30:17, 31:23, 32:19,

33:2, 34:9, 34:11, 34:25, 35:8, 35:9, 36:8, 36:15, 36:18, 37:15, 37:17, 37:18, 37:20, 38:9, 38:16, 39:12, 39:15, 40:3, 40:16, 41:7, 41:11, 41:16, 41:20, 41:21, 41:24, 42:2, 42:3, 42:5, 42:6, 42:7, 42:15, 42:16, 42:21, 43:4, 43:7, 43:10, 43:12, 44:3, 44:12, 44:14, 44:16, 45:1, 45:2, 45:12, 45:16, 46:3, 46:5, 46:25, 47:3, 47:25, 48:25, 49:9, 50:3, 50:4, 50:19, 51:4, 51:9, 51:16, 51:23, 51:24, 52:2, 52:3, 53:4, 53:9, 53:18, 53:20, 53:21, 54:11, 54:14, 54:23, 55:6, 55:9, 55:15, 55:16, 55:18, 55:22, 55:24, 56:1, 56:3, 56:5, 56:7, 56:15, 56:17, 56:18, 57:22, 58:1, 58:4, 58:10, 58:13, 58:17, 58:18, 59:19, 59:23, 59:24, 60:8, 60:12, 60:14, 60:23, 62:2, 62:3, 62:17, 62:18, 63:18, 63:20, 64:6, 64:11, 65:1, 65:3, 65:4, 65:6, 65:9, 65:12, 66:5  
**isn't** [5] - 23:19, 23:23, 30:16, 44:22, 45:16  
**issue** [32] - 4:21, 5:3, 5:14, 7:17, 8:16, 8:17, 9:23, 13:15, 18:2, 24:3, 37:24, 38:4, 38:25, 39:11, 41:21, 42:16, 44:11, 44:14, 44:17, 49:24, 50:19, 51:1, 51:2, 51:9, 51:11, 53:17, 54:8, 55:10, 56:16, 63:4, 63:16  
**issued** [9] - 18:1, 27:15, 27:24, 27:25, 28:14, 28:15, 35:11, 41:9, 43:12  
**issues** [4] - 3:11, 54:17, 56:10, 63:17  
**it** [173] - 3:20, 4:18, 4:22, 5:11, 5:12, 5:13, 5:21, 6:6, 6:10, 6:11, 6:18, 6:19, 7:6, 7:11, 8:4, 9:10, 9:11, 9:12, 10:8, 10:13, 11:5, 11:6, 11:21, 12:5, 12:18, 13:1, 13:6, 13:16, 14:17, 14:20, 14:21, 14:25, 15:2, 15:3, 15:12, 15:17, 15:21, 16:15, 16:22, 17:1, 17:8, 17:20, 17:25, 18:9, 19:11, 19:20, 19:23, 20:5, 20:11, 20:23, 21:3, 21:5, 22:3, 22:5, 22:9, 23:6, 23:17, 25:4, 25:6, 26:3, 26:11, 26:17, 26:18, 28:21, 28:22, 29:11, 29:13, 29:15, 31:12, 32:12, 32:13, 32:14, 33:9, 33:14, 33:22, 34:1, 34:2, 34:12, 34:14, 34:23, 35:4, 35:23, 39:8, 39:13, 39:18, 39:19, 40:2, 40:14, 40:21, 41:20, 42:21, 42:22, 43:19, 44:7, 44:8, 44:15, 45:6, 45:19, 45:25, 46:1, 46:3, 46:4, 46:7, 46:12, 47:1, 47:3, 47:9, 47:11, 48:2, 48:4, 48:18, 48:23, 48:25, 49:10, 49:17, 49:18, 50:2, 50:3, 50:9, 50:12, 50:15, 51:12, 53:14, 56:2, 56:7, 56:8, 56:13, 57:3, 57:7, 57:23, 58:18, 58:23, 58:25, 59:19, 59:23, 59:24, 60:1, 60:2, 60:8, 60:10, 60:12, 60:14, 60:17, 61:11, 61:13, 61:17, 61:18, 62:10, 62:11, 62:24, 63:2, 63:8, 63:19, 64:6, 64:16, 64:21, 65:7, 65:12  
**It's** [1] - 34:24  
**it's** [64] - 4:8, 4:9, 6:13, 8:10, 8:18, 11:6, 11:12, 12:23, 12:24, 13:13, 15:11,

18:9, 18:20, 19:18, 19:19, 20:22, 21:6, 21:7, 23:14, 24:21, 25:21, 27:14, 27:21, 28:7, 28:17, 29:22, 30:11, 31:3, 31:13, 31:21, 32:5, 33:1, 34:12, 34:21, 35:2, 35:4, 37:11, 41:24, 42:13, 42:14, 43:25, 45:25, 46:7, 47:13, 47:24, 48:6, 48:7, 48:14, 48:17, 49:7, 50:7, 51:5, 51:9, 54:2, 54:12, 56:19, 57:16, 57:17, 58:17, 59:14, 62:13, 63:15, 65:2  
**its** [2] - 8:18, 11:11  
**itself** [1] - 51:22

## J

**J** [1] - 1:17  
**jail** [1] - 6:25  
**JANINE** [1] - 1:21  
**January** [2] - 13:10  
**JOHN** [3] - 1:8, 1:17, 2:1  
**joined** [2] - 55:2, 55:3  
**joining** [1] - 16:1  
**joint** [1] - 49:23  
**Jones** [11] - 39:1, 39:5, 41:11, 41:25, 42:1, 42:7, 42:12, 43:7, 43:19, 45:1, 45:6  
**Jones-Farmer** [11] - 39:1, 39:5, 41:11, 41:25, 42:1, 42:7, 42:12, 43:7, 43:19, 45:1, 45:6  
**judge** [8] - 33:1, 35:2, 41:10, 42:20, 42:22, 43:8, 43:9, 64:8  
**Judge** [12] - 26:21, 27:4, 38:4, 38:25, 39:11, 40:20, 41:1, 41:17, 45:2, 46:20, 51:14, 65:25  
**JUDGE** [1] - 1:11  
**judge's** [1] - 38:10  
**judges** [2] - 54:5, 65:2  
**judgment** [6] - 50:14, 53:19, 53:21, 63:8, 63:16, 63:19  
**judicial** [2] - 49:17, 62:9  
**June** [20] - 12:13, 12:24, 13:20, 15:6, 15:23, 15:24, 16:8, 16:13, 37:5, 37:11, 48:24, 52:24, 57:10, 58:4, 59:1, 60:7, 62:4, 63:5, 64:5  
**jury** [25] - 7:11, 7:16, 9:5, 11:8, 11:9, 11:13, 15:13, 16:18, 17:8, 17:19, 18:2, 18:4, 23:23, 23:24, 40:10, 40:15, 43:8, 43:9, 56:10, 57:12, 60:5, 63:18, 65:9  
**just** [67] - 4:21, 6:13, 8:14, 11:9, 11:20, 12:11, 13:25, 14:3, 14:8, 14:13, 14:14, 15:19, 16:25, 17:9, 17:17, 18:3, 18:20, 18:21, 19:9, 19:15, 20:5, 21:21, 22:7, 23:15, 29:2, 29:17, 30:4, 31:1, 31:2, 31:5, 31:9, 34:10, 38:21, 39:3, 40:13, 40:18, 44:8, 44:23, 45:2, 47:22, 48:17, 49:9, 49:17, 49:18, 50:2, 51:2, 53:4, 53:14, 53:22, 53:23, 54:5, 54:6, 57:9, 57:16, 57:17, 59:4, 59:9, 59:18, 60:1, 61:1, 61:20, 61:24, 62:6, 62:14, 64:9, 65:13, 65:17  
**Justice** [1] - 1:18



<p><b>justify</b> <sup>[1]</sup> - 34:8</p> <p><b>justifying</b> <sup>[1]</sup> - 27:17</p>	<p><b>legal</b> <sup>[6]</sup> - 11:13, 62:22, 63:4, 63:12, 63:24, 64:1</p> <p><b>legitimate</b> <sup>[2]</sup> - 17:7, 34:18</p> <p><b>legitimately</b> <sup>[1]</sup> - 35:7</p> <p><b>lend</b> <sup>[1]</sup> - 51:22</p> <p><b>less</b> <sup>[4]</sup> - 23:9, 23:10, 33:17, 45:18</p> <p><b>let</b> <sup>[10]</sup> - 5:21, 26:22, 27:18, 43:22, 45:18, 48:17, 50:12, 55:21, 56:23, 57:13</p> <p><b>let's</b> <sup>[13]</sup> - 7:11, 7:12, 13:2, 15:14, 27:6, 36:19, 40:4, 40:18, 41:1, 50:17, 54:5, 55:21, 59:4</p> <p><b>Let's</b> <sup>[1]</sup> - 22:13</p> <p><b>letter</b> <sup>[1]</sup> - 17:20</p> <p><b>letters</b> <sup>[1]</sup> - 10:12</p> <p><b>LEWIS</b> <sup>[1]</sup> - 60:20</p> <p><b>Lewis</b> <sup>[2]</sup> - 60:20, 61:20</p> <p><b>Lewis's</b> <sup>[1]</sup> - 64:14</p> <p><b>liberty</b> <sup>[1]</sup> - 51:6</p> <p><b>life</b> <sup>[2]</sup> - 31:21, 47:12</p> <p><b>lift</b> <sup>[1]</sup> - 49:9</p> <p><b>light</b> <sup>[2]</sup> - 10:1</p> <p><b>like</b> <sup>[38]</sup> - 6:17, 9:24, 14:17, 14:20, 15:10, 16:18, 19:1, 21:7, 23:14, 23:17, 26:1, 32:6, 33:16, 33:22, 34:10, 37:5, 37:22, 38:21, 43:15, 44:2, 44:7, 46:13, 46:23, 51:6, 54:8, 56:10, 58:19, 59:23, 60:9, 60:22, 61:4, 61:17, 62:6, 63:6, 63:8, 63:15, 65:1</p> <p><b>Like</b> <sup>[1]</sup> - 56:21</p> <p><b>likes</b> <sup>[1]</sup> - 4:5</p> <p><b>limit</b> <sup>[1]</sup> - 47:14</p> <p><b>limitation</b> <sup>[1]</sup> - 47:17</p> <p><b>limiting</b> <sup>[1]</sup> - 48:17</p> <p><b>line</b> <sup>[1]</sup> - 11:19</p> <p><b>lines</b> <sup>[1]</sup> - 32:6</p> <p><b>LIOSLOS</b> <sup>[1]</sup> - 1:17</p> <p><b>Lisa</b> <sup>[1]</sup> - 16:5</p> <p><b>list</b> <sup>[4]</sup> - 12:7, 12:23, 15:20, 19:9</p> <p><b>listed</b> <sup>[1]</sup> - 8:17</p> <p><b>lists</b> <sup>[2]</sup> - 12:19, 19:23</p> <p><b>litany</b> <sup>[1]</sup> - 4:1</p> <p><b>literal</b> <sup>[1]</sup> - 43:14</p> <p><b>literally</b> <sup>[2]</sup> - 20:18, 38:6</p> <p><b>litigation</b> <sup>[1]</sup> - 9:22</p> <p><b>little</b> <sup>[4]</sup> - 32:24, 60:16, 60:23, 61:5</p> <p><b>live</b> <sup>[2]</sup> - 47:12, 51:9</p> <p><b>lives</b> <sup>[1]</sup> - 6:17</p> <p><b>LLP</b> <sup>[2]</sup> - 1:22, 2:1</p> <p><b>LOL</b> <sup>[1]</sup> - 22:14</p> <p><b>Lone</b> <sup>[1]</sup> - 61:4</p> <p><b>long</b> <sup>[12]</sup> - 9:8, 10:12, 11:5, 18:1, 21:19, 22:6, 23:6, 25:11, 25:13, 25:25, 43:2</p> <p><b>long-term</b> <sup>[4]</sup> - 10:12, 21:19, 22:6, 23:6</p> <p><b>longer</b> <sup>[1]</sup> - 65:12</p> <p><b>look</b> <sup>[11]</sup> - 9:2, 9:24, 18:9, 22:6, 31:25, 44:6, 49:25, 57:6, 57:19, 60:11, 63:4</p>	<p><b>Look</b> <sup>[2]</sup> - 33:22, 45:25</p> <p><b>looked</b> <sup>[5]</sup> - 5:11, 32:2, 43:24, 47:18, 47:19</p> <p><b>looking</b> <sup>[4]</sup> - 36:14, 36:15, 49:5, 61:20</p> <p><b>looks</b> <sup>[5]</sup> - 14:17, 14:20, 44:1, 44:2, 59:24</p> <p><b>lose</b> <sup>[1]</sup> - 50:18</p> <p><b>loss</b> <sup>[1]</sup> - 18:16</p> <p><b>lost</b> <sup>[1]</sup> - 20:22</p> <p><b>lot</b> <sup>[7]</sup> - 17:17, 18:23, 31:25, 33:19, 34:5, 34:16, 52:12</p> <p><b>lots</b> <sup>[3]</sup> - 19:4</p> <p><b>Louisiana</b> <sup>[1]</sup> - 1:15</p> <p><b>Lovett</b> <sup>[1]</sup> - 2:6</p> <p><b>LT</b> <sup>[2]</sup> - 10:8, 10:12</p> <p><b>Lucius</b> <sup>[1]</sup> - 64:18</p> <p><b>Luis</b> <sup>[1]</sup> - 61:23</p> <p><b>Luna</b> <sup>[3]</sup> - 32:10, 32:11, 32:13</p>
<p><b>K</b></p> <p><b>K</b> <sup>[1]</sup> - 2:5</p> <p><b>keep</b> <sup>[2]</sup> - 39:20, 47:16</p> <p><b>keeps</b> <sup>[1]</sup> - 19:14</p> <p><b>Kelly</b> <sup>[1]</sup> - 16:7</p> <p><b>kind</b> <sup>[6]</sup> - 21:4, 21:6, 58:10, 62:19, 63:8, 65:4</p> <p><b>kissing</b> <sup>[1]</sup> - 16:5</p> <p><b>knew</b> <sup>[1]</sup> - 36:1</p> <p><b>knock</b> <sup>[1]</sup> - 43:2</p> <p><b>know</b> <sup>[64]</sup> - 3:14, 5:13, 5:14, 6:2, 6:4, 6:5, 6:18, 7:3, 7:10, 10:2, 15:2, 16:16, 16:18, 17:5, 17:8, 19:16, 20:20, 24:22, 25:22, 25:25, 26:9, 28:6, 28:11, 29:2, 30:16, 31:3, 32:2, 32:4, 32:13, 33:1, 33:2, 33:12, 34:11, 35:11, 37:2, 37:4, 38:11, 38:12, 44:21, 45:7, 45:21, 46:18, 48:14, 50:14, 50:17, 54:4, 56:17, 57:3, 57:13, 57:22, 57:24, 59:22, 59:24, 60:3, 62:13, 62:20, 63:4, 63:6, 63:15, 63:20, 65:8</p> <p><b>knowing</b> <sup>[1]</sup> - 63:25</p> <p><b>known</b> <sup>[2]</sup> - 22:3, 51:23</p> <p><b>knows</b> <sup>[4]</sup> - 18:5, 19:21, 25:10, 53:18</p>	<p><b>L</b></p> <p><b>lacks</b> <sup>[1]</sup> - 27:16</p> <p><b>laid</b> <sup>[1]</sup> - 3:10</p> <p><b>Landy</b> <sup>[1]</sup> - 1:22</p> <p><b>Lanie</b> <sup>[3]</sup> - 2:9, 66:4, 66:8</p> <p><b>largest</b> <sup>[1]</sup> - 47:10</p> <p><b>last</b> <sup>[8]</sup> - 8:4, 12:19, 17:18, 20:24, 36:25, 52:10, 58:24, 60:25</p> <p><b>late</b> <sup>[2]</sup> - 4:21, 60:13</p> <p><b>later</b> <sup>[9]</sup> - 10:24, 11:1, 21:17, 22:20, 22:21, 40:15, 50:10</p> <p><b>laundering</b> <sup>[4]</sup> - 8:4, 35:17, 35:22, 63:7</p> <p><b>Laura</b> <sup>[2]</sup> - 52:16, 54:22</p> <p><b>law</b> <sup>[8]</sup> - 17:20, 24:5, 41:22, 41:24, 42:14, 43:18, 47:4, 55:15</p> <p><b>laws</b> <sup>[3]</sup> - 24:11, 24:15, 51:8</p> <p><b>lawyer</b> <sup>[1]</sup> - 39:6</p> <p><b>lawyers</b> <sup>[5]</sup> - 7:4, 47:12, 48:18, 48:19, 60:17</p> <p><b>lay</b> <sup>[2]</sup> - 57:3, 61:11</p> <p><b>lead</b> <sup>[1]</sup> - 43:5</p> <p><b>leading</b> <sup>[1]</sup> - 16:7</p> <p><b>leak</b> <sup>[1]</sup> - 3:21</p> <p><b>leaked</b> <sup>[1]</sup> - 4:13</p> <p><b>least</b> <sup>[7]</sup> - 6:7, 18:12, 40:3, 45:14, 46:23, 47:18, 54:9</p> <p><b>leave</b> <sup>[5]</sup> - 7:12, 13:6, 27:11, 48:3, 60:7</p> <p><b>leaving</b> <sup>[2]</sup> - 60:12, 60:14</p> <p><b>led</b> <sup>[1]</sup> - 57:5</p> <p><b>left</b> <sup>[1]</sup> - 43:11</p>	<p><b>M</b></p> <p><b>M</b> <sup>[3]</sup> - 2:9, 66:4, 66:8</p> <p><b>made</b> <sup>[18]</sup> - 6:8, 11:21, 14:25, 15:16, 17:4, 17:19, 18:8, 22:5, 24:2, 25:7, 29:15, 30:24, 34:15, 34:16, 45:25, 51:3, 57:17, 64:9</p> <p><b>magistrate</b> <sup>[4]</sup> - 38:10, 41:10, 42:19, 42:22</p> <p><b>main</b> <sup>[1]</sup> - 48:20</p> <p><b>major</b> <sup>[2]</sup> - 12:12, 38:17</p> <p><b>make</b> <sup>[13]</sup> - 6:12, 12:8, 21:22, 26:7, 31:25, 42:11, 42:12, 43:18, 43:19, 49:17, 53:13, 58:10, 58:23</p> <p><b>makes</b> <sup>[8]</sup> - 11:15, 16:23, 24:24, 34:1, 40:22, 42:17, 44:4, 45:6</p> <p><b>Man</b> <sup>[1]</sup> - 55:24</p> <p><b>manager</b> <sup>[1]</sup> - 32:9</p> <p><b>mankind</b> <sup>[1]</sup> - 40:23</p> <p><b>many</b> <sup>[4]</sup> - 53:7, 59:3, 59:4, 65:14</p> <p><b>March</b> <sup>[5]</sup> - 18:8, 28:23, 52:23, 59:16, 64:11</p> <p><b>mark</b> <sup>[1]</sup> - 38:18</p> <p><b>marker</b> <sup>[1]</sup> - 40:5</p> <p><b>market</b> <sup>[5]</sup> - 26:5, 26:7, 33:21, 35:23, 51:7</p> <p><b>markets</b> <sup>[1]</sup> - 40:23</p> <p><b>Mars</b> <sup>[4]</sup> - 21:2, 21:3, 21:9, 21:12</p> <p><b>Marshals</b> <sup>[1]</sup> - 47:2</p> <p><b>mask</b> <sup>[1]</sup> - 34:1</p> <p><b>masks</b> <sup>[1]</sup> - 34:1</p> <p><b>Massachusetts</b> <sup>[1]</sup> - 2:3</p> <p><b>massive</b> <sup>[2]</sup> - 34:9, 40:24</p> <p><b>material</b> <sup>[3]</sup> - 20:6, 22:4, 38:10</p> <p><b>materiality</b> <sup>[3]</sup> - 37:25, 38:2, 56:12</p> <p><b>mathematics</b> <sup>[1]</sup> - 51:24</p> <p><b>Matlock</b> <sup>[3]</sup> - 55:3, 61:23, 62:7</p> <p><b>matter</b> <sup>[9]</sup> - 25:14, 25:15, 46:3, 49:1, 49:3, 49:24, 60:2, 63:17, 66:6</p> <p><b>MATTHEW</b> <sup>[1]</sup> - 1:21</p>

**maximize** <sup>[1]</sup> - 20:16  
**may** <sup>[15]</sup> - 7:12, 21:3, 26:11, 26:15, 27:10, 43:5, 45:21, 48:22, 51:16, 53:16, 60:1, 60:13, 60:20, 64:12  
**Maybe** <sup>[1]</sup> - 59:24  
**maybe** <sup>[5]</sup> - 19:17, 26:1, 59:23  
**MCGUIRE** <sup>[1]</sup> - 2:5  
**me** <sup>[32]</sup> - 5:11, 6:19, 9:20, 12:11, 15:10, 17:13, 20:22, 22:6, 25:19, 26:22, 27:18, 27:20, 27:21, 27:23, 38:11, 39:4, 43:22, 44:8, 45:18, 48:16, 48:17, 50:12, 55:21, 56:11, 56:23, 56:25, 59:3, 59:25, 60:18, 60:19, 62:12  
**mean** <sup>[14]</sup> - 10:12, 44:5, 49:15, 49:17, 50:13, 59:23, 60:5, 60:13, 62:17, 62:19, 62:23, 63:17, 64:25  
**meaning** <sup>[2]</sup> - 4:24, 25:13  
**means** <sup>[2]</sup> - 25:11  
**meant** <sup>[1]</sup> - 38:24  
**measures** <sup>[1]</sup> - 4:12  
**mechanical** <sup>[1]</sup> - 1:24  
**media** <sup>[7]</sup> - 5:25, 6:2, 6:5, 6:13, 6:22, 7:6, 20:14  
**meet** <sup>[2]</sup> - 41:13, 43:20  
**meeting** <sup>[1]</sup> - 53:2  
**memorandum** <sup>[1]</sup> - 9:25  
**mentioned** <sup>[3]</sup> - 14:19, 23:8, 50:21  
**mentioning** <sup>[1]</sup> - 22:7  
**mentions** <sup>[1]</sup> - 23:2  
**merits** <sup>[1]</sup> - 45:20  
**message** <sup>[3]</sup> - 5:10, 14:18, 14:21  
**messages** <sup>[9]</sup> - 14:17, 14:21, 14:24, 19:6, 19:7, 20:6, 20:8, 20:10  
**method** <sup>[2]</sup> - 39:9, 42:15  
**methodology** <sup>[1]</sup> - 29:21  
**microphone** <sup>[1]</sup> - 7:21  
**might** <sup>[2]</sup> - 60:1, 65:12  
**Mike** <sup>[1]</sup> - 32:9  
**milestone** <sup>[1]</sup> - 53:2  
**million** <sup>[33]</sup> - 10:17, 10:19, 10:22, 21:16, 21:22, 27:17, 29:7, 29:12, 29:19, 29:20, 29:21, 32:25, 33:6, 33:7, 33:12, 34:13, 34:16, 34:25, 35:7, 36:15, 36:20, 36:21, 37:14, 37:15, 37:17, 37:18, 37:20, 38:11, 38:17, 40:21, 44:13, 46:19  
**minute** <sup>[1]</sup> - 22:20  
**minutes** <sup>[8]</sup> - 21:9, 22:20, 22:21, 22:25, 23:5, 25:23  
**misdrafted** <sup>[1]</sup> - 19:17  
**misfunction** <sup>[1]</sup> - 31:4  
**misleading** <sup>[15]</sup> - 18:12, 18:14, 19:1, 19:23, 19:24, 20:1, 20:6, 23:4, 30:9, 30:10, 30:12, 33:14, 33:24, 42:19, 59:7  
**misreading** <sup>[1]</sup> - 19:10  
**miss** <sup>[1]</sup> - 58:24  
**Mitchell** <sup>[1]</sup> - 54:22  
**modeled** <sup>[1]</sup> - 54:12  
**modify** <sup>[1]</sup> - 3:5  
**Mokbel** <sup>[3]</sup> - 38:3, 38:21, 45:3

**Monday** <sup>[1]</sup> - 29:5  
**money** <sup>[16]</sup> - 8:3, 28:16, 33:19, 34:16, 35:17, 35:20, 35:22, 35:23, 36:6, 36:8, 39:6, 39:21, 41:3, 45:25, 46:14, 63:7  
**monies** <sup>[1]</sup> - 28:3  
**month** <sup>[1]</sup> - 22:16  
**months** <sup>[4]</sup> - 11:2, 37:1, 53:7, 60:24  
**moon** <sup>[2]</sup> - 21:7, 21:13  
**more** <sup>[14]</sup> - 4:10, 6:3, 10:20, 20:11, 20:22, 22:10, 22:11, 23:4, 34:19, 36:3, 46:8, 59:10, 61:5  
**Morgan** <sup>[1]</sup> - 30:17  
**morning** <sup>[4]</sup> - 3:7, 10:20, 27:13, 29:5  
**Morris** <sup>[1]</sup> - 16:5  
**most** <sup>[1]</sup> - 64:22  
**motion** <sup>[27]</sup> - 3:4, 3:12, 7:14, 7:15, 17:2, 23:9, 26:10, 26:15, 29:4, 33:17, 42:18, 47:6, 50:14, 50:15, 50:16, 50:20, 53:17, 54:24, 55:2, 55:4, 55:8, 55:14, 62:2, 62:7, 62:13, 63:6  
**MOTION** <sup>[1]</sup> - 1:10  
**motions** <sup>[8]</sup> - 27:2, 48:11, 51:17, 51:22, 52:4, 52:10, 62:14, 63:9  
**mouth** <sup>[2]</sup> - 52:9, 65:5  
**move** <sup>[3]</sup> - 23:12, 24:10, 51:10  
**moved** <sup>[1]</sup> - 37:23  
**MR** <sup>[85]</sup> - 1:14, 1:17, 1:17, 1:21, 2:1, 2:4, 2:5, 3:7, 3:10, 4:16, 4:25, 5:12, 6:1, 7:15, 7:23, 14:5, 17:16, 23:21, 23:25, 24:8, 26:16, 26:19, 26:21, 26:24, 27:2, 27:4, 27:7, 27:10, 27:13, 27:19, 27:24, 28:11, 28:19, 28:21, 33:11, 36:21, 36:24, 37:2, 37:7, 37:14, 39:25, 44:6, 44:9, 44:16, 44:19, 44:22, 45:1, 46:7, 46:13, 46:20, 47:22, 48:5, 48:8, 48:9, 48:22, 49:21, 50:20, 50:25, 51:14, 52:8, 52:21, 53:16, 53:25, 54:3, 54:7, 54:10, 56:12, 58:6, 58:9, 58:16, 58:19, 59:6, 59:9, 59:12, 60:20, 61:23, 63:22, 64:8, 64:16, 64:20, 64:24, 65:11, 65:20, 65:21, 65:25  
**Mr** <sup>[92]</sup> - 3:5, 3:13, 3:15, 3:24, 4:5, 4:15, 5:6, 5:9, 6:9, 7:13, 10:15, 12:22, 13:1, 13:2, 13:9, 13:14, 14:11, 17:18, 18:20, 19:14, 19:25, 21:1, 21:8, 22:10, 22:15, 23:2, 23:5, 23:9, 23:19, 26:11, 26:23, 26:25, 27:11, 27:12, 28:2, 28:3, 28:9, 28:16, 30:5, 30:9, 30:13, 30:23, 31:8, 31:15, 32:16, 32:20, 33:4, 35:14, 35:20, 38:12, 39:23, 40:11, 40:20, 43:23, 45:24, 46:11, 47:9, 47:15, 48:18, 49:13, 50:13, 51:13, 51:15, 52:17, 52:25, 53:14, 54:1, 55:3, 55:11, 55:17, 56:23, 58:5, 58:23, 60:9, 60:13, 60:21, 61:4, 61:12, 61:13, 61:20, 61:23, 61:25, 62:19, 64:14, 65:6  
**Ms** <sup>[2]</sup> - 54:19, 58:12  
**MS** <sup>[9]</sup> - 1:21, 2:5, 52:15, 54:21, 56:2, 56:13, 57:2, 57:8, 59:18  
**much** <sup>[5]</sup> - 40:9, 40:11, 54:21, 56:3,

64:16  
**multi** <sup>[1]</sup> - 14:6  
**multi-tab** <sup>[1]</sup> - 14:6  
**multiple** <sup>[1]</sup> - 5:15  
**Musk** <sup>[1]</sup> - 9:16  
**must** <sup>[3]</sup> - 26:6, 29:23, 41:13  
**my** <sup>[40]</sup> - 4:25, 5:5, 5:14, 5:20, 8:3, 8:12, 8:16, 8:17, 8:25, 9:9, 9:18, 11:6, 14:11, 14:25, 15:15, 15:24, 16:13, 16:20, 17:3, 24:4, 24:14, 24:19, 25:12, 25:21, 25:22, 27:7, 31:23, 45:25, 47:15, 49:23, 50:7, 51:23, 51:24, 56:1, 56:5, 57:14, 57:17, 59:24, 60:24, 66:5

## N

**N** <sup>[1]</sup> - 3:1  
**nail** <sup>[1]</sup> - 54:10  
**name** <sup>[5]</sup> - 12:19, 31:16, 32:22, 35:21  
**nature** <sup>[1]</sup> - 50:1  
**necessarily** <sup>[3]</sup> - 43:25, 56:20, 63:14  
**need** <sup>[17]</sup> - 15:6, 16:16, 36:7, 39:6, 43:4, 43:17, 43:19, 44:1, 45:13, 46:12, 51:20, 52:2, 53:20, 57:23, 60:3, 62:10, 63:1  
**needle** <sup>[1]</sup> - 23:12  
**needs** <sup>[3]</sup> - 4:11, 5:16  
**Netflix** <sup>[5]</sup> - 25:1, 25:3, 25:5, 25:8, 26:2  
**never** <sup>[2]</sup> - 15:17  
**new** <sup>[1]</sup> - 53:11  
**New** <sup>[1]</sup> - 1:19  
**next** <sup>[3]</sup> - 15:20, 22:9, 52:5  
**night** <sup>[2]</sup> - 20:24, 21:17  
**nights** <sup>[1]</sup> - 60:13  
**nine** <sup>[1]</sup> - 37:1  
**no** <sup>[40]</sup> - 11:5, 19:20, 23:6, 28:21, 29:2, 29:6, 29:13, 29:18, 31:15, 31:19, 32:8, 32:19, 32:21, 35:11, 35:12, 35:16, 35:17, 35:21, 35:22, 36:1, 36:2, 38:14, 38:15, 39:16, 39:17, 41:21, 42:14, 42:18, 42:23, 44:22, 46:9, 46:19, 52:19, 53:19, 53:23, 55:10, 57:5, 65:23  
**noncontroversial** <sup>[1]</sup> - 9:23  
**none** <sup>[2]</sup> - 29:8, 30:21  
**nonsensical** <sup>[1]</sup> - 53:22  
**Normand** <sup>[1]</sup> - 2:1  
**not** <sup>[117]</sup> - 4:13, 4:14, 4:19, 5:1, 5:6, 5:12, 5:18, 5:22, 6:5, 6:12, 6:14, 7:10, 7:14, 8:16, 8:18, 10:15, 10:18, 11:5, 11:9, 11:12, 11:14, 12:1, 13:6, 13:17, 14:7, 14:14, 15:2, 16:22, 18:18, 18:21, 19:19, 21:22, 23:4, 23:12, 23:17, 24:21, 24:22, 25:14, 26:14, 27:21, 28:1, 28:3, 28:6, 28:8, 28:15, 30:12, 31:9, 31:12, 31:16, 32:19, 33:1, 33:7, 33:8, 34:12, 34:17, 35:1, 35:8, 36:11, 37:20, 38:7, 38:19, 38:20, 39:15, 40:12, 40:16, 41:2, 41:3, 41:7, 41:17, 42:2, 42:4, 42:6, 42:14, 42:15, 43:4, 43:5, 43:14, 43:16, 43:17, 44:14, 44:16, 45:20, 47:23, 48:6,

48:7, 48:15, 48:17, 49:16, 50:4, 50:23, 51:2, 52:8, 52:17, 53:13, 54:11, 54:18, 54:23, 55:2, 56:7, 56:8, 56:20, 56:25, 57:16, 57:17, 57:20, 58:14, 59:19, 60:3, 60:6, 61:9, 61:14, 61:20, 63:15, 65:5, 65:14

**note** [2] - 13:13, 30:4

**noted** [2] - 12:6, 14:5

**nothing** [10] - 8:20, 9:19, 14:4, 24:10, 29:22, 32:18, 45:6, 57:18, 62:13, 62:19

**notice** [3] - 41:18, 41:21, 41:23

**notwithstanding** [1] - 54:18

**novelty** [1] - 49:2

**November** [1] - 11:1

**Novogratz** [2] - 32:9, 32:16

**now** [40] - 8:9, 9:9, 10:23, 11:9, 13:20, 14:14, 14:19, 14:22, 16:1, 17:11, 19:4, 23:2, 24:3, 25:18, 25:21, 27:23, 27:24, 28:1, 29:1, 29:2, 33:2, 33:15, 35:8, 36:7, 37:3, 41:1, 41:6, 41:14, 42:8, 45:11, 46:22, 49:5, 49:14, 57:11, 60:11, 60:19, 61:2, 62:10, 64:5, 64:21

**Number** [5] - 3:25, 4:3, 18:10, 18:24, 52:22

**number** [4] - 33:18, 49:2, 49:25, 64:10

**numbered** [1] - 66:6

**numbers** [2] - 10:21, 36:17

**numerous** [1] - 20:21

**NW** [1] - 1:19

## O

**O** [1] - 3:1

**O'Brien** [1] - 1:22

**obfuscated** [1] - 28:23

**objection** [1] - 55:5

**objective** [1] - 56:6

**obligation** [1] - 26:6

**obtained** [1] - 43:6

**obvious** [2] - 24:9, 54:16

**obviously** [11] - 3:10, 4:8, 18:25, 31:24, 39:4, 42:25, 47:23, 54:3, 54:25, 56:14, 62:23

**occurred** [1] - 55:12

**occurs** [1] - 30:19

**October** [11] - 10:25, 21:1, 22:13, 40:11, 48:23, 50:3, 52:10, 55:1, 60:12, 61:2, 61:10

**odd** [1] - 21:3

**OF** [3] - 1:1, 1:4, 1:10

**of** [295] - 1:18, 2:10, 3:2, 3:5, 3:12, 3:21, 4:1, 4:5, 4:18, 4:23, 5:7, 5:8, 5:14, 5:20, 5:21, 5:22, 6:5, 6:7, 6:11, 6:19, 6:24, 7:3, 7:11, 7:16, 7:19, 7:25, 8:6, 8:7, 8:12, 8:13, 8:14, 8:19, 8:20, 8:22, 8:23, 8:24, 8:25, 9:3, 9:14, 9:17, 9:23, 10:2, 10:3, 10:4, 10:5, 10:16, 10:17, 10:19, 11:2, 11:14, 11:18, 11:20, 12:7, 12:10, 12:12, 13:1, 13:12, 14:6, 14:10, 14:15, 14:16, 14:24, 15:3, 15:19, 15:20,

15:22, 15:24, 16:5, 16:11, 16:16, 16:23, 17:3, 17:22, 17:23, 17:25, 18:15, 18:23, 19:5, 19:9, 19:10, 19:12, 19:16, 19:17, 19:18, 19:19, 19:22, 19:24, 20:2, 20:4, 20:10, 20:12, 20:18, 20:25, 21:4, 21:7, 21:12, 21:14, 21:18, 21:21, 21:22, 21:23, 22:2, 22:10, 22:11, 22:23, 23:24, 24:3, 24:4, 24:12, 24:17, 25:16, 26:4, 26:8, 27:16, 27:17, 27:25, 28:4, 28:5, 28:16, 28:18, 28:23, 28:24, 29:16, 30:6, 30:12, 30:20, 30:21, 31:3, 31:8, 31:10, 31:23, 31:25, 32:3, 32:10, 32:21, 33:3, 33:18, 33:19, 33:21, 34:5, 34:16, 34:18, 34:19, 34:20, 35:4, 35:15, 35:17, 35:23, 36:2, 36:22, 37:1, 37:6, 37:11, 37:15, 37:16, 37:17, 37:20, 37:21, 38:3, 38:5, 38:12, 38:22, 38:24, 40:1, 40:2, 40:5, 40:8, 40:9, 40:13, 40:20, 40:22, 40:23, 41:19, 41:20, 41:21, 41:23, 42:6, 42:10, 42:15, 42:19, 43:8, 43:9, 43:22, 43:24, 44:2, 44:3, 44:7, 45:9, 45:20, 45:22, 45:23, 46:14, 46:18, 46:21, 47:16, 47:18, 47:19, 47:20, 48:1, 48:2, 48:4, 48:15, 48:19, 48:24, 48:25, 49:2, 49:3, 49:8, 49:16, 49:18, 49:23, 49:25, 50:1, 50:6, 50:16, 51:2, 51:21, 52:5, 52:12, 53:6, 53:10, 53:14, 53:25, 54:11, 54:22, 55:8, 55:9, 55:12, 55:16, 55:19, 55:25, 56:4, 56:10, 56:21, 57:6, 57:8, 58:4, 58:10, 58:18, 59:4, 59:9, 59:14, 59:20, 60:2, 60:17, 60:24, 61:5, 61:13, 62:19, 62:24, 63:8, 63:12, 63:13, 63:20, 63:21, 63:24, 63:25, 64:5, 64:10, 64:13, 65:4, 65:5, 65:10, 65:12, 66:5, 66:5, 66:6

**off** [4] - 30:4, 46:23, 54:12, 57:5

**offer** [1] - 15:8

**offering** [1] - 9:25

**Office** [1] - 1:14

**Official** [4] - 2:9, 2:9, 66:4, 66:8

**oh** [2] - 23:2, 46:20

**okay** [17] - 23:19, 27:7, 28:17, 37:5, 37:12, 44:14, 44:18, 45:18, 46:11, 48:5, 48:11, 59:17, 62:20, 63:4, 63:5, 64:3, 64:25

**omissions** [1] - 31:13

**omits** [1] - 22:4

**omitted** [1] - 20:6

**on** [106] - 3:15, 4:6, 5:25, 6:2, 6:5, 6:13, 7:6, 8:6, 8:18, 9:19, 10:25, 11:7, 12:23, 13:20, 14:18, 15:7, 15:8, 15:16, 15:20, 16:2, 16:8, 16:9, 16:10, 16:11, 16:13, 17:2, 17:9, 17:21, 17:22, 18:8, 18:13, 19:6, 19:8, 20:11, 21:1, 21:2, 21:3, 21:9, 21:12, 21:24, 22:9, 22:12, 23:3, 23:4, 23:8, 24:2, 24:14, 24:15, 25:19, 26:4, 26:16, 27:2, 28:7, 28:23, 28:25, 29:5, 29:11, 30:8, 31:2, 31:12, 31:13, 32:11, 34:9, 34:24, 36:12, 37:17, 37:24, 39:19, 39:20, 40:3, 40:16, 41:18, 41:20, 42:23, 45:16, 48:24, 49:21,

49:24, 50:5, 51:6, 51:11, 51:12, 52:12, 52:24, 53:21, 54:10, 54:13, 54:22, 55:23, 58:20, 59:1, 59:16, 60:18, 61:24, 62:6, 62:21, 63:7, 63:12, 64:4, 64:11, 64:13, 64:25, 65:12

**once** [8] - 24:2, 24:19, 24:24, 29:16, 41:8, 41:9, 42:9, 51:19

**one** [51] - 5:13, 6:1, 8:3, 8:22, 12:4, 14:20, 14:23, 14:24, 15:9, 16:18, 18:2, 18:6, 18:12, 19:12, 19:14, 19:20, 19:23, 20:25, 22:20, 23:22, 25:3, 25:8, 31:23, 32:3, 32:8, 36:8, 36:11, 36:12, 37:25, 38:12, 40:3, 44:1, 44:2, 44:3, 45:1, 47:2, 47:12, 50:7, 51:24, 52:13, 54:15, 55:9, 57:16, 59:4, 59:14, 59:19, 63:7, 64:5

**one-year** [1] - 36:8

**ones** [1] - 47:18

**online** [2] - 3:22, 3:23

**only** [22] - 10:15, 10:18, 11:5, 11:14, 13:13, 23:25, 27:14, 29:25, 31:13, 33:2, 33:25, 34:21, 35:13, 36:10, 39:9, 45:7, 50:22, 51:24, 57:20, 58:14, 63:22, 65:11

**onwards** [1] - 37:11

**opening** [1] - 16:15

**opined** [1] - 62:21

**opinion** [2] - 55:16, 55:25

**opportunity** [3] - 4:17, 61:18, 61:19

**oppose** [1] - 54:25

**opposed** [6] - 6:6, 46:4, 48:14, 51:8, 55:19, 63:13

**opposes** [1] - 62:7

**opposite** [1] - 54:15

**opposition** [2] - 45:12, 54:24

**oppositions** [1] - 48:15

**or** [64] - 5:19, 8:11, 9:1, 9:18, 10:4, 11:11, 11:25, 17:11, 18:12, 18:13, 18:14, 18:16, 20:16, 22:3, 22:4, 22:16, 24:7, 25:12, 28:5, 28:8, 29:3, 29:10, 29:15, 29:20, 29:21, 29:24, 30:16, 30:25, 32:6, 32:20, 33:15, 34:20, 35:6, 36:2, 36:22, 40:12, 40:23, 41:9, 42:2, 43:5, 43:7, 43:9, 45:14, 45:20, 45:22, 46:5, 46:23, 47:2, 49:18, 50:4, 50:6, 50:15, 51:25, 52:6, 58:25, 59:8, 59:14, 60:18, 65:10

**order** [12] - 3:2, 3:21, 27:5, 47:7, 48:4, 48:13, 51:16, 54:24, 60:18, 63:6, 64:4, 64:9

**ordering** [1] - 6:21

**organized** [1] - 58:11

**original** [1] - 44:12

**other** [28] - 5:18, 6:8, 6:12, 7:3, 7:9, 9:16, 12:4, 14:19, 15:7, 15:9, 19:2, 20:8, 20:14, 25:12, 39:17, 45:8, 46:21, 47:2, 48:19, 49:13, 55:10, 58:15, 58:21, 60:17, 61:13, 62:5, 63:2

**others** [1] - 21:5

**otherwise** [1] - 28:8



**our** <sup>[34]</sup> - 3:15, 6:17, 7:11, 9:21, 10:14, 14:4, 17:2, 18:9, 19:15, 29:4, 30:11, 33:17, 35:4, 38:3, 51:12, 52:10, 52:23, 53:6, 55:2, 55:5, 55:8, 56:21, 57:3, 58:24, 58:25, 59:16, 60:23, 61:14, 61:15, 61:24, 64:20, 65:2

**out** <sup>[35]</sup> - 3:10, 3:16, 7:4, 8:17, 9:23, 9:25, 10:9, 10:16, 14:3, 14:7, 15:25, 19:15, 19:23, 23:1, 23:11, 28:24, 30:19, 31:20, 32:17, 34:20, 35:4, 35:23, 37:4, 37:15, 37:21, 43:2, 43:5, 44:20, 50:9, 53:5, 57:4, 59:4, 59:15, 61:11, 63:25

**over** <sup>[13]</sup> - 10:21, 11:2, 12:10, 14:16, 21:11, 23:24, 26:22, 29:6, 29:7, 30:3, 33:3, 34:3

**overbroad** <sup>[1]</sup> - 29:23

**own** <sup>[5]</sup> - 20:17, 31:16, 35:21, 58:14, 60:24

## P

**P** <sup>[1]</sup> - 3:1

**P.C** <sup>[1]</sup> - 2:6

**pages** <sup>[3]</sup> - 8:20, 10:4, 14:10

**papers** <sup>[2]</sup> - 4:18, 30:3

**Paragraph** <sup>[7]</sup> - 19:18, 19:21, 20:2, 20:5, 20:13, 21:21, 45:9

**paragraph** <sup>[2]</sup> - 20:3

**Paragraphs** <sup>[1]</sup> - 18:15

**part** <sup>[6]</sup> - 12:12, 18:7, 19:17, 52:5, 58:4, 58:6

**participate** <sup>[3]</sup> - 13:17, 26:7, 51:6

**participation** <sup>[2]</sup> - 6:22, 29:16

**particular** <sup>[2]</sup> - 27:5, 51:17

**particularly** <sup>[1]</sup> - 61:7

**particulars** <sup>[4]</sup> - 7:16, 11:7, 31:10, 33:3

**parties** <sup>[2]</sup> - 50:10, 52:25

**pass** <sup>[1]</sup> - 61:19

**past** <sup>[3]</sup> - 5:6, 22:16, 31:1

**path** <sup>[1]</sup> - 62:9

**pattern** <sup>[1]</sup> - 22:1

**pay** <sup>[1]</sup> - 47:12

**PC** <sup>[1]</sup> - 39:7

**peep** <sup>[2]</sup> - 21:22, 32:8

**penalty** <sup>[1]</sup> - 60:25

**people** <sup>[15]</sup> - 5:15, 6:9, 9:16, 18:25, 25:2, 30:17, 30:20, 31:2, 31:18, 31:22, 31:23, 32:4, 32:7, 32:22, 34:9

**people's** <sup>[2]</sup> - 64:12, 65:1

**per** <sup>[2]</sup> - 59:8, 64:10

**percent** <sup>[8]</sup> - 21:14, 21:18, 21:21, 22:8, 36:15, 36:18, 37:16, 37:17

**period** <sup>[11]</sup> - 12:21, 13:3, 13:15, 14:15, 15:22, 16:12, 18:17, 24:12, 25:16, 48:25, 49:10

**permission** <sup>[2]</sup> - 47:14, 47:21

**permit** <sup>[3]</sup> - 5:24, 6:14, 24:17

**permits** <sup>[1]</sup> - 50:9

**permitted** <sup>[3]</sup> - 5:1, 6:12, 24:16

**persistent** <sup>[1]</sup> - 35:1

**person** <sup>[3]</sup> - 18:18, 25:7, 33:22

**person's** <sup>[1]</sup> - 32:22

**personal** <sup>[2]</sup> - 3:22, 60:24

**personally** <sup>[1]</sup> - 57:15

**perspective** <sup>[1]</sup> - 57:15

**persuade** <sup>[1]</sup> - 17:8

**pervasive** <sup>[2]</sup> - 35:1, 40:24

**PHILIP** <sup>[2]</sup> - 1:17, 2:4

**phone** <sup>[1]</sup> - 25:19

**pick** <sup>[2]</sup> - 43:15, 59:4

**picture** <sup>[2]</sup> - 3:22, 16:5

**piece** <sup>[1]</sup> - 15:9

**pin** <sup>[1]</sup> - 40:4

**pittance** <sup>[1]</sup> - 23:11

**place** <sup>[2]</sup> - 11:2, 26:4

**plaintiff** <sup>[1]</sup> - 63:21

**plan** <sup>[1]</sup> - 26:16

**plans** <sup>[1]</sup> - 24:17

**play** <sup>[3]</sup> - 17:1, 34:1, 60:15

**Plus** <sup>[3]</sup> - 52:23, 52:24, 53:6

**pocketed** <sup>[1]</sup> - 21:22

**pockets** <sup>[2]</sup> - 21:16, 22:23

**point** <sup>[10]</sup> - 17:18, 29:1, 31:9, 41:12, 42:18, 42:19, 43:4, 45:8, 47:25, 52:1

**points** <sup>[2]</sup> - 44:24, 52:21

**pool** <sup>[1]</sup> - 46:14

**position** <sup>[8]</sup> - 10:24, 13:19, 22:23, 24:20, 33:13, 51:12, 61:12, 61:25

**positive** <sup>[1]</sup> - 51:4

**possession** <sup>[4]</sup> - 5:5, 28:16, 47:16, 48:6

**possible** <sup>[1]</sup> - 60:10

**possibly** <sup>[3]</sup> - 19:15, 26:3, 49:4

**post** <sup>[5]</sup> - 21:15, 22:25, 30:18, 41:22, 45:4

**post-indictment** <sup>[2]</sup> - 41:22, 45:4

**posting** <sup>[2]</sup> - 19:1, 21:9

**postings** <sup>[1]</sup> - 6:8

**posts** <sup>[1]</sup> - 4:6

**potential** <sup>[3]</sup> - 3:16, 5:19, 18:3

**practical** <sup>[6]</sup> - 49:1, 49:3, 49:10, 49:16, 49:24, 50:3

**pre** <sup>[2]</sup> - 41:16, 46:9

**pre-approval** <sup>[1]</sup> - 46:9

**pre-indictment** <sup>[1]</sup> - 41:16

**predicate** <sup>[1]</sup> - 11:11

**prediction** <sup>[5]</sup> - 9:6, 11:21, 24:21, 24:25, 26:8

**predictions** <sup>[2]</sup> - 8:23, 9:12

**preferred** <sup>[1]</sup> - 42:14

**prepare** <sup>[3]</sup> - 49:1, 50:10, 50:11

**prepared** <sup>[2]</sup> - 49:4, 51:10

**presence** <sup>[2]</sup> - 40:20, 46:18

**present** <sup>[1]</sup> - 52:20

**presentation** <sup>[3]</sup> - 11:13, 17:12, 49:18

**presented** <sup>[3]</sup> - 11:8, 16:19, 57:12

**preserves** <sup>[1]</sup> - 47:9

**presumably** <sup>[1]</sup> - 3:20

**pretense** <sup>[1]</sup> - 8:10

**pretrial** <sup>[2]</sup> - 4:1, 46:8

**pretty** <sup>[3]</sup> - 19:12, 52:11, 61:20

**preview** <sup>[1]</sup> - 50:25

**previously** <sup>[1]</sup> - 49:22

**price** <sup>[10]</sup> - 8:24, 9:5, 11:21, 20:10, 22:11, 22:15, 24:12, 24:21, 25:20, 26:8

**prices** <sup>[1]</sup> - 24:10

**primarily** <sup>[1]</sup> - 41:16

**prime** <sup>[1]</sup> - 38:22

**print** <sup>[2]</sup> - 14:7, 37:4

**printed** <sup>[1]</sup> - 14:3

**prior** <sup>[1]</sup> - 16:17

**prison** <sup>[1]</sup> - 25:9

**probable** <sup>[11]</sup> - 27:15, 27:16, 29:2, 31:10, 35:3, 35:11, 35:12, 40:3, 40:16, 41:10, 42:10

**probably** <sup>[8]</sup> - 3:12, 53:11, 59:10, 63:3, 63:5, 64:5, 64:22

**problem** <sup>[2]</sup> - 48:20, 58:16

**procedure** <sup>[2]</sup> - 53:19, 53:21

**Procedure** <sup>[1]</sup> - 7:25

**proceed** <sup>[3]</sup> - 40:6, 41:5, 41:6

**proceedings** <sup>[2]</sup> - 66:1, 66:6

**Proceedings** <sup>[1]</sup> - 1:24

**PROCEEDINGS** <sup>[1]</sup> - 1:10

**proceeds** <sup>[14]</sup> - 29:14, 29:16, 33:7, 34:20, 35:8, 35:17, 36:1, 36:13, 37:16, 38:7, 38:19, 38:23, 42:6

**process** <sup>[2]</sup> - 24:4, 25:15

**produce** <sup>[4]</sup> - 57:9, 57:10, 57:11, 57:12

**produced** <sup>[2]</sup> - 1:25, 19:10

**production** <sup>[2]</sup> - 14:10, 60:23

**profit** <sup>[1]</sup> - 18:16

**profits** <sup>[4]</sup> - 20:17, 29:7, 33:6, 38:6

**prohibit** <sup>[1]</sup> - 6:1

**promise** <sup>[1]</sup> - 8:11

**promotional** <sup>[1]</sup> - 35:22

**proof** <sup>[1]</sup> - 45:22

**property** <sup>[2]</sup> - 39:12, 39:15

**proposal** <sup>[1]</sup> - 48:21

**proposed** <sup>[2]</sup> - 48:13, 60:18

**prosecutor** <sup>[1]</sup> - 3:16

**protected** <sup>[2]</sup> - 56:15, 56:18

**protective** <sup>[1]</sup> - 3:21

**prove** <sup>[5]</sup> - 19:11, 23:13, 55:16, 56:6, 60:2

**provide** <sup>[6]</sup> - 16:13, 30:12, 33:8, 37:9, 37:10, 55:6

**provided** <sup>[10]</sup> - 10:14, 11:10, 12:7, 13:24, 22:5, 23:20, 28:6, 38:4, 48:10, 55:10

**provides** <sup>[3]</sup> - 14:24, 29:13, 47:4

**providing** <sup>[1]</sup> - 12:14

**public** <sup>[2]</sup> - 25:13, 44:1

**pull** <sup>[4]</sup> - 7:21, 12:11, 13:25, 14:1

**pulled** <sup>[1]</sup> - 53:5

**pump** <sup>[8]</sup> - 12:10, 12:17, 13:1, 13:11, 15:23, 16:14, 33:20, 49:6

**pump-and-dump** <sup>[7]</sup> - 12:10, 12:17,

<p>13:1, 13:11, 16:14, 33:20, 49:6  <b>pumping</b> [3] - 32:12, 33:4  <b>purchase</b> [2] - 20:8, 20:15  <b>purchased</b> [2] - 30:24, 31:1  <b>purchases</b> [1] - 22:10  <b>purported</b> [5] - 14:15, 15:16, 15:23, 16:23, 49:6  <b>purportedly</b> [2] - 13:22, 17:4  <b>purposes</b> [1] - 18:22  <b>put</b> [13] - 3:22, 6:25, 7:6, 9:25, 20:24, 24:1, 35:23, 40:4, 50:15, 52:8, 53:4, 61:13, 61:17  <b>putative</b> [1] - 65:15  <b>putting</b> [1] - 65:5</p>	<p><b>recorded</b> [1] - 1:24  <b>records</b> [9] - 16:3, 16:10, 16:22, 29:20, 30:18, 47:24, 48:9, 49:8, 59:16  <b>rectify</b> [1] - 48:1  <b>red</b> [1] - 10:1  <b>REDU</b> [3] - 34:4, 34:5  <b>reference</b> [5] - 15:2, 30:8, 44:4, 53:24, 64:19  <b>referenced</b> [1] - 44:10  <b>referring</b> [2] - 5:7, 34:1  <b>refrain</b> [1] - 6:21  <b>refuse</b> [1] - 57:21  <b>regard</b> [3] - 16:23, 47:9, 58:13  <b>regarding</b> [2] - 33:18, 49:8  <b>regardless</b> [3] - 26:8, 28:6, 36:9  <b>regards</b> [6] - 10:6, 11:4, 12:22, 50:7, 51:2, 61:25  <b>registered</b> [1] - 24:22  <b>relate</b> [1] - 9:5  <b>related</b> [3] - 7:17, 8:3, 9:3  <b>relation</b> [1] - 5:4  <b>relationship</b> [2] - 5:15, 49:23  <b>release</b> [4] - 3:5, 4:3, 41:4, 58:12  <b>relevant</b> [7] - 13:3, 13:15, 15:11, 18:21, 19:2, 59:15  <b>relied</b> [1] - 38:15  <b>relief</b> [1] - 39:17  <b>rely</b> [2] - 36:12, 39:19  <b>relying</b> [3] - 15:7, 21:24, 38:18  <b>remain</b> [1] - 5:24  <b>remains</b> [1] - 5:15  <b>remedies</b> [2] - 40:6, 41:23  <b>remedy</b> [10] - 4:11, 6:3, 39:17, 41:8, 41:11, 41:15, 41:22, 42:2, 42:7, 45:2  <b>rendition</b> [1] - 62:24  <b>repeat</b> [2] - 5:22, 40:13  <b>replied</b> [2] - 43:3  <b>reply</b> [3] - 10:14, 44:4, 63:11  <b>report</b> [2] - 10:9, 22:13  <b>Reporter</b> [4] - 2:9, 2:9, 66:4, 66:8  <b>REPORTER'S</b> [1] - 66:3  <b>represent</b> [1] - 48:9  <b>representation</b> [1] - 8:11  <b>representing</b> [1] - 25:12  <b>represents</b> [2] - 12:16, 15:14  <b>request</b> [1] - 55:5  <b>requesting</b> [1] - 7:16  <b>require</b> [2] - 25:15, 49:7  <b>required</b> [4] - 8:10, 32:5, 43:20, 55:16  <b>requirement</b> [1] - 32:19  <b>requires</b> [1] - 24:11  <b>reserved</b> [1] - 43:7  <b>reset</b> [2] - 53:8, 53:9  <b>resolve</b> [2] - 49:12, 65:10  <b>resolved</b> [1] - 4:23  <b>resonate</b> [1] - 16:22  <b>respect</b> [5] - 31:6, 54:17, 55:12, 59:19, 61:7  <b>respond</b> [4] - 17:15, 34:7, 44:23, 63:10</p>	<p><b>responded</b> [1] - 11:17  <b>response</b> [5] - 12:6, 15:11, 18:9, 54:23, 57:3  <b>responses</b> [3] - 12:13, 57:6, 64:13  <b>restraint</b> [1] - 26:4  <b>restriction</b> [1] - 51:6  <b>restrictions</b> [1] - 24:2  <b>retail</b> [1] - 65:15  <b>retain</b> [1] - 51:20  <b>retreat</b> [1] - 45:7  <b>return</b> [2] - 40:5, 41:4  <b>returned</b> [1] - 29:24  <b>returning</b> [1] - 29:10  <b>reversals</b> [1] - 46:22  <b>review</b> [1] - 7:19  <b>reviewed</b> [2] - 29:20, 38:15  <b>REYES</b> [2] - 61:23, 63:22  <b>Reyes</b> [1] - 61:23  <b>RGLS</b> [2] - 55:9, 55:13  <b>Rhonda</b> [1] - 48:16  <b>right</b> [34] - 3:3, 6:20, 7:10, 7:13, 10:1, 11:22, 25:18, 26:10, 26:20, 26:22, 27:9, 27:23, 27:24, 28:19, 33:23, 37:7, 47:5, 48:11, 49:5, 49:14, 50:24, 54:7, 54:19, 58:13, 58:23, 60:7, 60:11, 60:19, 62:10, 64:3, 64:5, 64:21, 65:24  <b>rights</b> [1] - 24:4  <b>rise</b> [1] - 65:7  <b>rises</b> [1] - 65:7  <b>RMR</b> [2] - 2:9, 66:4  <b>Road</b> [1] - 1:22  <b>rocketed</b> [1] - 25:2  <b>Room</b> [1] - 2:11  <b>Rosen</b> [2] - 27:8, 45:24  <b>ROSEN</b> [16] - 2:1, 27:13, 27:19, 27:24, 28:19, 28:21, 33:11, 36:21, 36:24, 37:2, 37:7, 37:14, 44:22, 45:1, 46:7, 48:9  <b>Rosenthal</b> [3] - 38:4, 39:11, 45:2  <b>rule</b> [4] - 36:8, 39:1, 39:5, 39:19  <b>Rule</b> [4] - 39:2, 39:10, 39:18, 45:5  <b>ruled</b> [1] - 63:7  <b>rules</b> [1] - 53:19  <b>Rules</b> [1] - 7:25  <b>ruling</b> [1] - 47:15  <b>run</b> [2] - 3:14, 16:9  <b>Rusk</b> [1] - 2:11  <b>RYBARCZYK</b> [2] - 1:8, 2:1  <b>Rybarczyk</b> [9] - 28:2, 28:3, 30:5, 30:23, 31:15, 33:4, 35:14, 35:20, 40:20  <b>Rybarczyk's</b> [4] - 26:25, 28:16, 47:15, 48:18</p>
<p><b>Q</b></p> <p><b>quashed</b> [1] - 29:23  <b>quashing</b> [1] - 29:10  <b>QUENTIN</b> [1] - 2:5  <b>question</b> [4] - 12:1, 44:19, 47:17, 64:8  <b>questions</b> [5] - 17:11, 23:18, 39:4, 43:9, 43:22  <b>quick</b> [2] - 23:6, 44:23  <b>quickly</b> [3] - 12:5, 13:25, 51:11  <b>quiet</b> [1] - 32:18  <b>quit</b> [1] - 37:5  <b>quite</b> [3] - 60:5, 61:14, 62:15  <b>quo</b> [1] - 37:11</p>	<p><b>R</b></p> <p><b>R</b> [1] - 3:1  <b>raised</b> [1] - 7:5  <b>raises</b> [3] - 5:14, 13:15, 32:8  <b>Ranch</b> [1] - 1:22  <b>range</b> [2] - 18:19, 59:13  <b>Ranger</b> [1] - 61:4  <b>rapid</b> [1] - 3:12  <b>rapidly</b> [1] - 21:6  <b>reach</b> [1] - 25:9  <b>reached</b> [1] - 3:16  <b>read</b> [2] - 20:2, 20:5  <b>reading</b> [1] - 5:13  <b>ready</b> [4] - 58:2, 58:3, 59:1  <b>real</b> [2] - 31:21, 51:9  <b>real-life</b> [1] - 31:21  <b>realistic</b> [1] - 51:16  <b>realize</b> [1] - 45:21  <b>really</b> [7] - 25:19, 26:12, 42:14, 51:2, 59:11, 63:1, 63:12  <b>reason</b> [7] - 3:25, 11:5, 24:10, 29:23, 33:2, 60:16, 65:11  <b>reasons</b> [4] - 31:25, 40:14, 57:2, 57:8  <b>rebutted</b> [1] - 45:2  <b>receive</b> [1] - 47:23  <b>recently</b> [1] - 27:16  <b>reckless</b> [6] - 38:1, 38:13, 38:23, 42:18, 45:8, 45:17  <b>record</b> [3] - 61:24, 62:6, 66:6</p>	<p><b>S</b></p> <p><b>S</b> [2] - 1:10, 3:1  <b>Sachs</b> [1] - 30:16  <b>said</b> [30] - 5:13, 5:17, 9:25, 11:23, 13:21, 16:1, 16:20, 25:3, 25:8, 25:19, 31:13, 32:20, 49:5, 50:18, 51:6, 53:15,</p>

54:2, 54:15, 55:12, 56:21, 57:18, 57:22, 57:23, 59:25, 61:17, 62:1, 62:20, 65:4, 65:7

**sales** [1] - 26:7

**same** [11] - 3:21, 20:15, 22:12, 40:11, 40:14, 44:11, 46:25, 47:13, 47:17, 55:25

**SAMUEL** [1] - 2:1

**satire** [2] - 56:18

**satirical** [2] - 56:19, 56:20

**Saved** [1] - 16:6

**savings** [1] - 44:2

**saw** [1] - 57:3

**say** [31] - 6:15, 11:6, 15:17, 15:21, 19:8, 23:22, 25:19, 31:13, 34:15, 34:19, 36:5, 36:17, 37:20, 38:1, 39:8, 42:25, 44:5, 48:2, 50:21, 54:5, 54:15, 55:23, 57:18, 59:4, 59:9, 59:18, 61:19, 62:6, 63:5, 64:20, 65:6

**saying** [21] - 4:20, 12:24, 16:25, 18:18, 21:7, 22:19, 24:9, 24:24, 26:14, 30:13, 33:22, 34:21, 42:3, 45:12, 49:13, 50:16, 56:1, 56:19, 56:20, 57:9, 57:11

**says** [8] - 9:7, 9:24, 10:8, 20:5, 21:18, 29:12, 29:13, 45:25

**schedule** [8] - 50:10, 53:13, 54:25, 60:11, 60:24, 61:6, 62:7, 63:9

**scheduled** [1] - 48:12

**scheduling** [7] - 48:13, 51:16, 54:24, 60:18, 64:4, 64:9, 64:13

**scheme** [7] - 12:17, 13:12, 18:25, 19:3, 34:9, 54:12, 54:14

**schemes** [2] - 12:10, 49:6

**SCOTT** [1] - 1:17

**Scott** [1] - 3:8

**searches** [1] - 8:19

**seats** [1] - 27:10

**SEC** [1] - 9:22

**second** [6] - 8:25, 10:5, 13:8, 16:4, 18:7

**secondary** [1] - 5:3

**secondly** [1] - 40:7

**Section** [2] - 1:18, 8:5

**securities** [18] - 8:7, 8:13, 9:2, 9:21, 10:7, 10:17, 11:16, 15:15, 16:16, 17:3, 20:9, 20:15, 24:11, 24:15, 24:17, 26:5, 50:22, 51:8

**security** [5] - 8:24, 9:1, 13:14, 24:20, 32:10

**See** [3] - 21:2, 21:3, 21:12

**see** [22] - 8:16, 8:23, 12:23, 13:2, 14:13, 15:20, 21:9, 32:7, 49:10, 49:16, 49:19, 62:10, 62:12, 62:16, 62:24, 62:25, 63:2, 63:4, 63:12, 63:14, 63:19, 65:22

**seek** [1] - 39:17

**seeking** [1] - 7:15

**seem** [1] - 21:3

**seems** [2] - 8:20, 54:8

**seen** [2] - 27:16, 48:16

**seizable** [1] - 42:4

**seize** [5] - 27:25, 29:3, 36:9, 46:12, 47:1

**seized** [12] - 28:1, 28:7, 29:10, 30:6, 36:15, 36:21, 37:3, 37:14, 39:12, 41:14, 41:16, 45:20

**seizure** [8] - 27:14, 27:17, 40:17, 41:1, 41:9, 42:2, 43:13, 45:4

**sell** [9] - 9:1, 13:6, 20:9, 25:21, 25:23, 25:24, 32:1, 51:3

**selling** [8] - 20:16, 22:25, 24:25, 25:11, 31:18, 32:7, 32:17, 33:15

**sells** [7] - 11:1, 21:10, 21:11, 21:14, 21:17, 22:20, 22:22

**semblance** [1] - 27:16

**sense** [3] - 49:17, 54:11, 63:16

**sensitive** [1] - 4:4

**sent** [4] - 5:9, 10:16, 15:25, 33:14

**separate** [4] - 8:6, 12:9, 25:18, 49:6

**September** [1] - 61:8

**series** [1] - 8:12

**serious** [1] - 51:6

**services** [1] - 46:8

**set** [7] - 48:23, 54:6, 59:1, 61:2, 61:25, 62:9

**sets** [1] - 39:5

**seven** [1] - 21:9

**sever** [1] - 49:20

**several** [2] - 8:19, 57:15

**share** [2] - 24:11, 30:21

**shares** [28] - 10:8, 10:15, 10:17, 10:22, 11:5, 12:20, 12:23, 20:9, 21:10, 21:11, 21:14, 21:18, 21:19, 21:22, 22:6, 22:10, 22:11, 22:22, 23:3, 23:5, 23:11, 25:15, 25:21, 31:18, 31:24, 33:15, 34:5, 56:1

**she** [1] - 45:4

**shifting** [1] - 32:24

**shifts** [1] - 34:15

**shoes** [1] - 63:20

**short** [5] - 10:9, 13:23, 22:13, 25:11

**short-circuit** [1] - 13:23

**shortly** [5] - 4:21, 9:9, 25:3, 31:6, 32:1

**should** [11] - 5:24, 11:9, 11:10, 40:6, 42:13, 43:20, 45:20, 47:1, 47:10, 53:3

**shouldn't** [1] - 46:6

**shove** [1] - 34:24

**show** [13] - 8:10, 15:10, 15:20, 16:13, 19:5, 30:13, 35:2, 38:6, 39:6, 39:7, 39:11, 45:22

**showed** [6] - 17:9, 18:20, 23:15, 30:11, 33:21, 56:23

**showing** [1] - 31:11

**shown** [3] - 38:14, 38:17, 39:20

**shows** [4] - 13:1, 14:10, 33:3, 45:15

**side** [5] - 39:24, 58:21, 63:12, 63:13, 65:12

**sides** [2] - 45:18, 45:21

**sift** [1] - 49:7

**significant** [2] - 10:16, 46:22

**signifies** [1] - 12:20

**similar** [1] - 18:14

**simplistic** [1] - 62:24

**simply** [7] - 10:3, 29:2, 29:11, 32:22, 39:5, 42:13, 45:6

**since** [9] - 17:25, 20:19, 28:22, 40:23, 41:18, 50:12, 54:13, 55:24, 57:7

**single** [5] - 18:18, 19:8, 29:25, 30:9, 53:2

**sir** [3] - 6:23, 7:2, 26:24

**sit** [2] - 59:23, 61:20

**sitting** [2] - 52:14, 65:14

**six** [3] - 22:20, 37:1, 45:14

**slated** [1] - 48:24

**sliced** [3] - 55:24, 56:7, 56:8

**Smith** [3] - 2:9, 66:4, 66:8

**So** [1] - 57:10

**so** [78] - 3:10, 3:25, 4:8, 4:11, 7:9, 9:12, 11:4, 12:12, 12:15, 12:24, 13:19, 13:25, 14:3, 14:6, 14:13, 15:1, 15:5, 15:12, 15:20, 15:22, 17:11, 17:17, 18:2, 18:6, 18:8, 18:11, 19:12, 19:17, 20:9, 20:16, 20:24, 21:8, 21:25, 22:17, 23:10, 28:17, 32:24, 34:10, 34:22, 35:11, 36:3, 36:9, 36:12, 36:13, 36:14, 37:16, 37:19, 41:21, 43:11, 45:16, 46:23, 47:15, 48:25, 49:9, 49:19, 51:12, 52:21, 53:20, 54:17, 55:3, 56:17, 57:2, 57:8, 57:13, 57:22, 57:25, 58:22, 58:25, 59:14, 61:11, 61:17, 62:18, 62:24, 63:3, 63:14, 65:11, 65:13

**social** [7] - 5:25, 6:2, 6:5, 6:13, 6:22, 7:6, 20:14

**sold** [8] - 12:20, 12:23, 13:14, 21:21, 22:8, 23:11, 31:6, 62:21

**solely** [1] - 31:14

**solution** [1] - 9:17

**some** [28] - 4:11, 4:12, 4:18, 6:7, 6:11, 7:3, 11:11, 15:1, 26:9, 31:3, 31:6, 32:20, 33:15, 40:13, 44:2, 44:3, 46:21, 48:14, 48:15, 51:21, 54:4, 54:5, 54:17, 56:14, 59:13, 60:13, 65:10

**somebody** [2] - 14:18, 45:22

**somehow** [1] - 34:9

**something** [20] - 6:24, 9:24, 11:24, 11:25, 16:20, 20:24, 22:3, 31:6, 32:6, 33:15, 35:6, 39:7, 45:20, 51:9, 56:19, 57:23, 58:24, 60:2, 60:18, 62:21

**sometime** [2] - 51:18, 52:4

**sometimes** [1] - 20:21

**somewhere** [1] - 28:17

**soon** [2] - 58:12, 60:10

**sooner** [1] - 55:1

**sophisticated** [1] - 52:3

**sorry** [2] - 33:11, 52:13

**sort** [10] - 5:7, 5:8, 8:23, 9:16, 11:20, 37:11, 38:11, 43:5, 44:2, 44:3

**sound** [1] - 56:10

**source** [2] - 34:18, 43:14

**sources** [1] - 49:8

**South** <sup>[1]</sup> - 1:22  
**Southern** <sup>[1]</sup> - 66:4  
**southern** <sup>[1]</sup> - 2:10  
**SOUTHERN** <sup>[1]</sup> - 1:1  
**span** <sup>[3]</sup> - 11:2, 12:10, 14:16  
**speak** <sup>[2]</sup> - 56:4, 61:21  
**speaking** <sup>[2]</sup> - 5:7, 56:5  
**special** <sup>[1]</sup> - 45:6  
**specific** <sup>[12]</sup> - 7:17, 8:7, 14:12, 17:3, 29:18, 33:17, 36:2, 40:12, 45:10, 59:13  
**specifically** <sup>[5]</sup> - 9:1, 17:2, 35:14, 35:18, 45:9  
**specifics** <sup>[2]</sup> - 43:25, 45:13  
**speculate** <sup>[1]</sup> - 18:3  
**speech** <sup>[2]</sup> - 56:15, 56:19  
**speed** <sup>[1]</sup> - 61:3  
**speedy** <sup>[5]</sup> - 49:14, 50:4, 51:25, 52:1, 52:17  
**spend** <sup>[2]</sup> - 25:8, 46:8  
**spending** <sup>[1]</sup> - 35:25  
**spent** <sup>[1]</sup> - 57:15  
**spoke** <sup>[1]</sup> - 14:13  
**spreadsheet** <sup>[6]</sup> - 12:16, 14:2, 14:7, 14:9, 14:22, 56:24  
**spurious** <sup>[1]</sup> - 17:9  
**squeeze** <sup>[1]</sup> - 22:14  
**stage** <sup>[2]</sup> - 31:10  
**standard** <sup>[2]</sup> - 24:15, 55:19  
**standpoint** <sup>[1]</sup> - 46:2  
**stands** <sup>[2]</sup> - 48:23, 64:21  
**Stanley** <sup>[1]</sup> - 30:17  
**start** <sup>[7]</sup> - 3:4, 4:20, 12:15, 15:14, 17:18, 21:8, 57:13  
**started** <sup>[1]</sup> - 10:20  
**starting** <sup>[1]</sup> - 11:2  
**starts** <sup>[2]</sup> - 21:9, 22:10  
**state** <sup>[1]</sup> - 21:20  
**stated** <sup>[1]</sup> - 16:15  
**statement** <sup>[15]</sup> - 10:2, 11:4, 16:2, 16:10, 18:13, 21:3, 21:4, 22:2, 24:3, 25:6, 51:4, 55:16, 55:19, 55:25, 56:13  
**statements** <sup>[40]</sup> - 8:16, 8:23, 10:5, 11:18, 12:2, 14:25, 15:7, 15:16, 16:11, 16:17, 17:4, 18:14, 19:22, 19:24, 20:1, 20:4, 30:13, 36:25, 37:3, 37:4, 37:10, 38:16, 54:16, 55:12, 56:14, 56:16, 57:11, 58:1, 58:7, 58:11, 58:14, 58:15, 59:5, 59:6, 59:7, 59:15, 59:20, 59:21, 62:5, 64:9  
**STATES** <sup>[3]</sup> - 1:1, 1:4, 1:11  
**States** <sup>[7]</sup> - 2:10, 3:8, 17:24, 24:1, 30:20, 33:23, 66:4  
**stating** <sup>[1]</sup> - 9:19  
**status** <sup>[2]</sup> - 27:20, 37:11  
**statute** <sup>[3]</sup> - 22:1, 24:4, 35:25  
**statutes** <sup>[2]</sup> - 8:2, 54:13  
**stay** <sup>[5]</sup> - 5:16, 27:25, 28:14, 28:15, 41:5  
**stays** <sup>[2]</sup> - 64:6

**stenography** <sup>[1]</sup> - 1:24  
**STEPHANIE** <sup>[1]</sup> - 2:5  
**stick** <sup>[1]</sup> - 55:1  
**still** <sup>[5]</sup> - 12:1, 28:5, 37:12, 50:18, 60:14  
**stock** <sup>[43]</sup> - 8:14, 9:8, 9:10, 10:17, 10:19, 12:7, 12:23, 13:3, 13:8, 13:12, 13:21, 14:12, 14:14, 14:19, 15:18, 16:21, 18:16, 21:6, 21:12, 22:7, 22:19, 24:10, 24:12, 24:25, 25:2, 25:9, 25:14, 30:16, 30:17, 30:24, 31:1, 31:6, 51:4, 55:18, 56:25, 57:16, 59:4, 59:8, 59:19, 59:20, 62:21, 62:22, 65:3  
**stocks** <sup>[2]</sup> - 9:15, 19:2  
**stop** <sup>[1]</sup> - 27:18  
**story** <sup>[1]</sup> - 40:8  
**strategy** <sup>[1]</sup> - 23:6  
**Street** <sup>[2]</sup> - 1:15, 2:2  
**strict** <sup>[2]</sup> - 5:20, 6:4  
**studies** <sup>[1]</sup> - 32:2  
**study** <sup>[1]</sup> - 61:18  
**STX** <sup>[1]</sup> - 42:25  
**SUA** <sup>[1]</sup> - 35:17  
**subjective** <sup>[1]</sup> - 56:6  
**Subsection** <sup>[1]</sup> - 8:9  
**substantial** <sup>[1]</sup> - 48:24  
**substantive** <sup>[1]</sup> - 65:13  
**such** <sup>[2]</sup> - 17:9, 42:24  
**suffered** <sup>[1]</sup> - 47:11  
**sufficient** <sup>[1]</sup> - 23:20  
**sufficiently** <sup>[1]</sup> - 24:6  
**suggested** <sup>[1]</sup> - 9:10  
**suggests** <sup>[1]</sup> - 21:5  
**Suite** <sup>[2]</sup> - 1:15, 1:23  
**summary** <sup>[6]</sup> - 50:14, 53:19, 53:21, 63:8, 63:15, 63:19  
**summary-judgment-type** <sup>[1]</sup> - 63:8  
**summer** <sup>[1]</sup> - 48:25  
**sun** <sup>[1]</sup> - 65:7  
**superseding** <sup>[7]</sup> - 7:19, 7:24, 8:11, 12:2, 18:15, 30:7, 35:13  
**supplement** <sup>[1]</sup> - 58:25  
**supply** <sup>[1]</sup> - 61:5  
**support** <sup>[3]</sup> - 8:13, 29:6, 42:24  
**supports** <sup>[1]</sup> - 8:21  
**supposed** <sup>[1]</sup> - 17:22  
**suppressed** <sup>[1]</sup> - 29:23  
**Supreme** <sup>[1]</sup> - 17:20  
**sure** <sup>[4]</sup> - 5:12, 27:19, 47:25, 58:23  
**surprise** <sup>[1]</sup> - 19:19  
**suspect** <sup>[1]</sup> - 52:1  
**swing** <sup>[1]</sup> - 16:1  
**switch** <sup>[2]</sup> - 26:22, 27:10  
**SXTC** <sup>[2]</sup> - 30:2, 30:15  
**symbols** <sup>[4]</sup> - 40:12, 42:23, 43:5, 43:15  
**system** <sup>[2]</sup> - 14:3, 14:4

## T

**tab** <sup>[1]</sup> - 14:6  
**tabs** <sup>[2]</sup> - 14:7, 14:23  
**tainted** <sup>[2]</sup> - 42:6, 42:15  
**take** <sup>[7]</sup> - 15:7, 27:4, 37:21, 38:25, 41:15, 41:23, 50:25  
**taken** <sup>[5]</sup> - 4:23, 24:20, 28:4, 38:4, 48:10  
**takes** <sup>[1]</sup> - 37:24  
**talk** <sup>[5]</sup> - 26:25, 27:6, 41:1, 50:5, 57:7  
**talked** <sup>[3]</sup> - 8:4, 16:25, 38:2  
**talking** <sup>[6]</sup> - 9:17, 19:14, 31:21, 37:12, 55:17, 59:5  
**talks** <sup>[1]</sup> - 35:13  
**tapered** <sup>[1]</sup> - 46:23  
**target** <sup>[3]</sup> - 22:15, 24:22, 25:9  
**targeted** <sup>[1]</sup> - 8:19  
**TATE** <sup>[1]</sup> - 2:5  
**tattoo** <sup>[2]</sup> - 32:10, 40:8  
**team** <sup>[1]</sup> - 60:23  
**tee** <sup>[1]</sup> - 50:19  
**teed** <sup>[1]</sup> - 51:4  
**tell** <sup>[18]</sup> - 4:5, 10:3, 13:21, 27:20, 27:23, 31:18, 31:23, 35:10, 44:8, 45:18, 56:16, 56:25, 57:14, 57:25, 59:25, 60:19, 61:8, 65:18  
**telling** <sup>[7]</sup> - 21:12, 21:24, 22:23, 22:24, 30:15, 46:19, 48:4  
**tells** <sup>[1]</sup> - 48:16  
**ten** <sup>[4]</sup> - 9:23, 10:25, 25:8  
**tend** <sup>[1]</sup> - 49:21  
**term** <sup>[7]</sup> - 10:12, 21:19, 22:6, 23:6, 25:11, 43:14  
**terms** <sup>[4]</sup> - 47:13, 48:1, 50:15, 63:24  
**terrific** <sup>[1]</sup> - 34:23  
**testifying** <sup>[1]</sup> - 65:16  
**TEXAS** <sup>[2]</sup> - 1:1, 1:6  
**Texas** <sup>[6]</sup> - 1:16, 1:23, 2:7, 2:10, 2:12, 66:5  
**texts** <sup>[1]</sup> - 19:7  
**than** <sup>[12]</sup> - 6:3, 23:9, 23:10, 24:15, 28:12, 34:19, 36:3, 39:17, 45:19, 46:8, 55:10, 59:10  
**thank** <sup>[14]</sup> - 4:16, 17:14, 17:16, 26:19, 26:21, 28:13, 39:22, 39:25, 43:21, 48:8, 54:21, 61:22, 65:24, 65:25  
**that** <sup>[423]</sup> - 3:6, 3:11, 3:21, 3:23, 4:5, 4:10, 4:12, 4:22, 4:23, 5:3, 5:9, 5:13, 5:14, 5:17, 5:20, 6:3, 6:7, 6:10, 6:14, 7:7, 7:11, 7:21, 7:24, 8:2, 8:13, 8:18, 8:21, 8:23, 9:4, 9:10, 9:11, 10:13, 10:14, 10:15, 10:16, 10:17, 10:23, 10:24, 10:25, 11:6, 11:12, 11:15, 11:19, 11:25, 12:1, 12:4, 12:6, 12:7, 12:13, 12:17, 12:20, 12:24, 13:3, 13:4, 13:6, 13:12, 13:13, 13:14, 13:15, 13:16, 13:22, 13:24, 13:25, 14:24, 14:25, 15:5, 15:6, 15:10, 15:12, 15:24, 16:6, 16:7, 16:8, 16:12, 16:13, 16:20, 17:6, 17:8,

17:18, 17:21, 18:5, 18:6, 18:7, 18:16, 18:18, 18:20, 19:2, 19:5, 19:8, 19:12, 19:14, 19:16, 19:22, 20:3, 20:9, 20:15, 20:16, 20:19, 21:4, 21:5, 21:14, 21:15, 21:17, 21:21, 21:23, 21:25, 22:3, 22:7, 22:15, 22:25, 23:4, 23:10, 23:11, 23:23, 23:25, 24:1, 24:5, 24:10, 24:11, 24:17, 24:20, 24:24, 25:2, 25:6, 25:9, 25:12, 25:13, 26:3, 26:8, 26:9, 26:15, 26:16, 27:8, 27:14, 27:16, 28:15, 29:2, 29:7, 29:9, 29:11, 29:12, 29:13, 29:15, 30:3, 30:13, 30:15, 30:21, 30:22, 30:23, 30:24, 31:2, 31:5, 31:9, 31:11, 31:15, 31:18, 31:24, 32:2, 32:4, 32:6, 32:7, 32:21, 32:22, 32:23, 32:25, 33:6, 33:8, 33:12, 33:13, 33:16, 33:18, 33:24, 34:1, 34:6, 34:8, 34:11, 34:19, 34:22, 34:25, 35:5, 35:6, 35:7, 35:9, 35:15, 35:18, 35:23, 36:1, 36:3, 36:10, 36:12, 36:15, 36:17, 36:22, 37:2, 37:3, 37:10, 37:15, 37:17, 37:19, 38:6, 38:8, 38:9, 38:10, 38:16, 38:17, 38:18, 38:22, 39:6, 39:7, 39:9, 39:11, 39:12, 39:16, 39:19, 39:20, 40:2, 40:3, 40:4, 40:5, 40:8, 40:11, 40:13, 40:18, 40:19, 40:22, 41:4, 41:5, 41:7, 41:12, 41:16, 41:19, 42:2, 42:7, 42:8, 42:9, 42:23, 42:24, 42:25, 43:2, 43:7, 43:9, 43:10, 43:13, 43:14, 43:17, 43:18, 44:5, 44:10, 44:12, 44:14, 44:16, 44:21, 45:1, 45:5, 45:6, 45:10, 45:12, 45:15, 45:16, 45:19, 45:21, 45:22, 46:5, 46:8, 46:10, 46:17, 46:22, 46:24, 47:8, 47:9, 47:13, 47:17, 48:1, 48:4, 48:9, 48:12, 48:15, 48:20, 48:23, 49:9, 49:10, 49:11, 49:16, 49:20, 49:21, 50:1, 50:2, 50:15, 50:19, 50:21, 50:25, 51:1, 51:4, 51:7, 51:18, 51:22, 51:25, 52:2, 52:5, 52:10, 52:12, 52:13, 52:15, 52:24, 53:1, 53:4, 53:9, 53:20, 53:23, 54:3, 54:6, 54:9, 54:13, 54:16, 54:18, 55:2, 55:6, 55:7, 55:11, 55:16, 55:22, 56:1, 56:5, 56:7, 56:8, 56:15, 56:16, 56:20, 56:24, 57:6, 57:9, 57:10, 57:17, 57:20, 58:3, 58:4, 58:10, 58:17, 58:24, 59:19, 60:1, 60:3, 60:13, 60:24, 61:7, 61:13, 61:16, 62:2, 62:3, 62:6, 62:8, 62:11, 62:24, 63:9, 63:16, 63:18, 63:19, 63:22, 63:23, 64:7, 64:12, 64:19, 64:25, 65:2, 65:3, 65:8, 65:12, 65:15, 65:17, 65:20, 66:5

**that's** [45] - 14:9, 14:14, 14:15, 15:2, 15:18, 16:2, 17:24, 18:19, 24:13, 24:15, 25:16, 26:15, 29:17, 30:2, 30:21, 32:3, 35:8, 36:11, 36:16, 36:21, 38:11, 39:8, 39:13, 39:18, 41:11, 44:20, 46:2, 46:11, 47:4, 47:15, 50:8, 51:12, 52:19, 53:19, 54:12, 55:14, 55:24, 56:25, 57:5, 58:18, 60:4, 60:5, 62:15, 62:19, 62:23

**THE** [88] - 1:10, 1:14, 1:21, 2:1, 3:3, 3:9, 4:15, 4:24, 5:11, 5:24, 6:15, 6:20, 6:24, 7:3, 7:21, 14:4, 17:15, 23:19, 23:22, 24:5, 26:10, 26:18, 26:20, 26:22,

26:25, 27:3, 27:6, 27:9, 27:11, 27:18, 27:20, 28:9, 28:17, 28:20, 33:10, 36:19, 36:23, 36:25, 37:5, 37:12, 39:23, 43:22, 44:8, 44:14, 44:18, 44:20, 44:25, 45:18, 46:11, 46:18, 47:5, 48:3, 48:6, 48:11, 49:12, 50:12, 50:24, 51:13, 52:7, 52:12, 52:19, 53:13, 53:23, 54:1, 54:4, 54:8, 54:19, 55:21, 56:10, 56:23, 57:5, 58:4, 58:7, 58:10, 58:18, 59:3, 59:8, 59:11, 59:17, 60:4, 62:12, 64:3, 64:15, 64:18, 64:23, 64:25, 65:17, 65:23

**The** [2] - 25:12, 66:1

**the** [712] - 3:2, 3:4, 3:6, 3:8, 3:11, 3:12, 3:17, 3:18, 3:21, 3:25, 4:6, 4:10, 4:12, 4:17, 4:21, 5:5, 5:6, 5:10, 5:20, 5:21, 5:23, 6:4, 6:7, 6:8, 6:10, 6:18, 7:3, 7:4, 7:5, 7:7, 7:9, 7:10, 7:11, 7:12, 7:17, 7:19, 7:24, 7:25, 8:1, 8:4, 8:9, 8:11, 8:16, 8:17, 8:19, 8:22, 8:23, 8:24, 8:25, 9:2, 9:3, 9:4, 9:5, 9:10, 9:15, 9:17, 9:18, 9:22, 9:23, 9:25, 10:1, 10:2, 10:3, 10:4, 10:6, 10:9, 10:11, 10:13, 10:15, 10:18, 10:20, 10:21, 10:23, 11:2, 11:4, 11:7, 11:9, 11:12, 11:13, 11:15, 11:17, 11:19, 11:24, 12:1, 12:2, 12:4, 12:5, 12:7, 12:8, 12:10, 12:12, 12:15, 12:16, 12:17, 12:19, 12:22, 13:3, 13:4, 13:8, 13:15, 13:18, 13:19, 13:23, 14:2, 14:3, 14:6, 14:7, 14:9, 14:11, 14:14, 14:15, 14:16, 14:19, 14:22, 14:25, 15:1, 15:3, 15:6, 15:8, 15:10, 15:11, 15:13, 15:14, 15:18, 15:19, 15:20, 15:22, 15:24, 16:1, 16:4, 16:6, 16:9, 16:11, 16:12, 16:15, 16:18, 16:19, 16:22, 16:23, 16:24, 17:1, 17:6, 17:12, 17:13, 17:15, 17:18, 17:19, 17:20, 17:22, 17:23, 18:2, 18:3, 18:4, 18:7, 18:14, 18:15, 18:17, 18:20, 18:21, 19:1, 19:3, 19:5, 19:9, 19:16, 19:17, 19:18, 19:19, 19:22, 20:2, 20:3, 20:4, 20:7, 20:8, 20:9, 20:10, 20:12, 20:13, 20:15, 20:16, 20:18, 20:19, 20:21, 20:22, 20:25, 21:4, 21:7, 21:12, 21:13, 21:15, 21:21, 22:1, 22:5, 22:9, 22:12, 22:13, 22:16, 22:19, 22:23, 23:10, 23:12, 23:19, 23:23, 23:24, 23:25, 24:1, 24:3, 24:4, 24:5, 24:9, 24:10, 24:13, 24:15, 24:19, 24:20, 24:25, 25:6, 25:7, 25:10, 25:11, 25:13, 25:16, 25:19, 25:24, 25:25, 26:3, 26:7, 26:10, 26:13, 27:6, 27:15, 27:17, 27:20, 27:21, 27:22, 27:24, 27:25, 28:1, 28:3, 28:5, 28:6, 28:7, 28:9, 28:10, 28:11, 28:12, 28:13, 28:14, 28:15, 28:18, 28:22, 28:23, 28:25, 29:1, 29:3, 29:4, 29:6, 29:10, 29:12, 29:15, 29:19, 29:24, 29:25, 30:2, 30:4, 30:6, 30:7, 30:9, 30:19, 30:20, 30:24, 31:1, 31:4, 31:5, 31:9, 31:16, 31:18, 31:20, 31:21, 31:22, 32:3, 32:6, 32:14, 32:17, 32:24, 33:1, 33:2, 33:3, 33:5, 33:8, 33:13, 33:15, 33:18, 33:23, 34:3, 34:4, 34:7, 34:11, 34:13, 34:18,

34:19, 34:20, 34:24, 35:2, 35:3, 35:12, 35:17, 35:20, 35:23, 35:25, 36:6, 36:9, 36:11, 36:13, 36:16, 36:21, 36:23, 36:24, 36:25, 37:2, 37:4, 37:7, 37:9, 37:16, 37:17, 37:21, 37:22, 37:24, 37:25, 38:1, 38:3, 38:5, 38:6, 38:7, 38:10, 38:13, 38:14, 38:16, 38:17, 38:19, 38:21, 38:22, 38:24, 39:1, 39:2, 39:5, 39:6, 39:8, 39:15, 39:20, 39:21, 40:2, 40:5, 40:6, 40:7, 40:8, 40:11, 40:14, 40:19, 40:22, 40:23, 40:24, 41:1, 41:3, 41:4, 41:6, 41:7, 41:10, 41:12, 41:15, 41:17, 41:20, 41:22, 41:23, 42:2, 42:3, 42:6, 42:8, 42:12, 42:14, 42:16, 42:17, 42:19, 42:22, 43:4, 43:8, 43:9, 43:12, 43:17, 43:18, 43:20, 44:4, 44:6, 44:10, 44:11, 44:12, 44:13, 45:1, 45:5, 45:7, 45:8, 45:9, 45:11, 45:17, 45:19, 45:20, 45:21, 45:22, 45:25, 46:2, 46:3, 46:4, 46:11, 46:12, 46:13, 46:14, 46:15, 46:17, 46:18, 46:21, 46:22, 46:23, 46:25, 47:2, 47:3, 47:4, 47:5, 47:6, 47:7, 47:9, 47:10, 47:11, 47:12, 47:13, 47:16, 47:17, 47:18, 47:19, 47:20, 47:22, 47:23, 47:25, 48:1, 48:7, 48:9, 48:10, 48:11, 48:13, 48:15, 48:19, 48:20, 48:21, 49:1, 49:2, 49:15, 49:18, 49:20, 49:22, 49:25, 50:1, 50:9, 50:10, 50:11, 50:18, 50:19, 50:23, 50:25, 51:6, 51:8, 51:11, 51:16, 51:18, 51:19, 51:20, 51:22, 52:4, 52:5, 52:7, 52:10, 52:12, 52:17, 52:24, 53:5, 53:6, 53:9, 53:16, 53:19, 53:21, 54:5, 54:6, 54:10, 54:11, 54:12, 54:13, 54:15, 54:17, 54:18, 54:24, 54:25, 55:1, 55:5, 55:6, 55:7, 55:8, 55:9, 55:10, 55:15, 55:18, 55:24, 55:25, 56:3, 56:8, 56:15, 56:16, 57:6, 57:11, 57:12, 57:25, 58:4, 58:7, 58:11, 58:13, 58:15, 58:16, 58:20, 59:1, 59:4, 59:6, 59:9, 59:13, 59:15, 59:20, 59:21, 60:5, 60:7, 60:10, 60:12, 60:16, 60:17, 60:22, 60:23, 60:24, 60:25, 61:3, 61:4, 61:5, 61:7, 61:8, 61:11, 61:15, 61:24, 61:25, 62:4, 62:6, 62:7, 62:14, 62:18, 62:19, 62:21, 62:25, 63:1, 63:4, 63:7, 63:10, 63:12, 63:13, 63:16, 63:17, 63:18, 63:20, 63:23, 63:24, 63:25, 64:5, 64:6, 64:9, 64:10, 64:11, 64:13, 64:20, 64:21, 64:22, 64:25, 65:3, 65:5, 65:7, 65:8, 65:9, 65:10, 65:11, 65:12, 65:18, 65:21, 66:5, 66:6, 66:6

**their** [20] - 8:21, 9:19, 12:6, 15:2, 15:8, 20:7, 20:9, 20:16, 32:5, 34:13, 34:15, 35:4, 35:8, 35:9, 35:15, 35:20, 37:8, 45:12, 51:19, 57:21

**them** [31] - 5:16, 8:12, 8:14, 8:17, 10:10, 11:19, 12:3, 16:17, 19:6, 21:24, 24:17, 25:15, 25:22, 25:23, 25:24, 26:1, 26:2, 27:4, 30:19, 37:9, 38:20, 47:18, 47:20, 57:11, 57:12, 58:12, 63:14, 65:2

**themselves** [2] - 19:7, 31:25



**then** <sup>[38]</sup> - 3:22, 8:6, 10:2, 10:25, 11:1, 12:18, 12:19, 13:1, 13:17, 14:17, 14:23, 15:1, 16:4, 16:8, 17:6, 18:4, 18:15, 19:25, 21:17, 23:8, 25:3, 30:18, 30:24, 31:6, 31:24, 36:5, 42:11, 42:24, 52:4, 53:5, 53:6, 53:21, 56:17, 58:1, 58:24, 62:9, 65:5, 65:9

**theories** <sup>[1]</sup> - 51:22

**theory** <sup>[12]</sup> - 17:7, 19:15, 19:16, 19:19, 20:12, 20:18, 35:9, 35:16, 37:17, 41:4, 54:11

**there** <sup>[50]</sup> - 3:20, 4:1, 4:11, 4:20, 5:3, 5:12, 7:10, 8:2, 8:6, 8:20, 9:19, 11:5, 14:22, 15:9, 17:18, 23:6, 24:10, 25:2, 27:25, 29:2, 29:18, 29:21, 32:20, 35:11, 35:12, 35:17, 35:21, 41:12, 43:4, 43:10, 44:21, 44:22, 45:10, 45:16, 46:15, 50:4, 53:10, 53:18, 55:15, 55:20, 55:22, 57:1, 58:10, 59:23, 61:12, 61:20, 62:10, 63:25, 65:13

**there's** <sup>[26]</sup> - 8:5, 10:5, 17:17, 24:8, 29:5, 29:25, 31:15, 31:18, 32:19, 35:22, 36:8, 39:7, 39:16, 41:21, 42:14, 42:23, 45:6, 46:9, 49:19, 51:24, 55:19, 57:8, 57:18, 62:7, 63:7, 63:16

**thereabouts** <sup>[1]</sup> - 52:6

**thereafter** <sup>[3]</sup> - 25:4, 31:7, 32:1

**therefore** <sup>[2]</sup> - 39:19, 43:6

**these** <sup>[31]</sup> - 6:11, 8:13, 9:9, 9:19, 11:18, 12:1, 12:9, 12:25, 13:5, 13:10, 13:16, 13:21, 14:25, 15:19, 16:16, 16:19, 18:23, 20:1, 20:6, 20:8, 22:14, 26:7, 30:18, 32:7, 36:1, 37:1, 37:12, 42:3, 57:25, 58:7, 60:15

**thesis** <sup>[1]</sup> - 31:23

**they** <sup>[109]</sup> - 5:7, 7:12, 8:17, 9:25, 11:10, 11:13, 11:18, 11:20, 12:6, 13:6, 13:24, 14:7, 16:12, 17:6, 17:8, 19:3, 25:13, 26:6, 26:8, 27:21, 27:22, 28:4, 28:7, 28:8, 29:14, 29:23, 30:21, 30:23, 31:22, 31:23, 31:24, 32:1, 33:13, 34:7, 34:8, 34:13, 34:14, 34:15, 34:19, 34:22, 34:24, 35:4, 35:6, 35:16, 35:19, 35:25, 36:2, 36:3, 36:5, 36:10, 36:11, 36:12, 36:13, 36:17, 37:5, 37:14, 37:20, 37:25, 38:5, 38:6, 38:22, 39:1, 40:15, 41:5, 42:4, 42:18, 42:19, 42:23, 42:24, 43:15, 43:16, 43:19, 43:20, 45:10, 45:13, 48:4, 50:16, 50:17, 50:18, 53:20, 55:6, 55:10, 55:11, 56:16, 57:13, 57:17, 57:21, 57:25, 58:2, 59:25, 60:1, 62:20, 62:21, 62:22, 63:21, 65:4

**they're** <sup>[23]</sup> - 5:13, 8:18, 9:20, 10:24, 12:13, 15:3, 15:7, 24:7, 24:14, 24:18, 24:24, 34:10, 34:21, 38:18, 42:21, 56:19, 57:9, 57:10, 63:17, 65:6

**they've** <sup>[14]</sup> - 8:20, 23:20, 24:2, 24:6, 28:5, 30:5, 34:11, 35:18, 37:3, 41:14, 48:16, 49:6, 57:20

**thing** <sup>[18]</sup> - 6:1, 6:17, 7:10, 10:20,

11:15, 12:4, 13:4, 19:14, 22:12, 23:22, 24:13, 30:4, 32:14, 40:3, 45:23, 54:15, 55:24, 63:8

**things** <sup>[13]</sup> - 3:18, 9:19, 20:22, 24:8, 32:3, 32:17, 37:18, 40:1, 51:21, 63:13, 65:10, 65:12

**think** <sup>[45]</sup> - 5:16, 9:12, 11:12, 11:18, 11:19, 13:4, 13:5, 15:11, 15:12, 17:5, 19:12, 24:8, 26:16, 32:5, 32:15, 40:2, 44:1, 46:3, 49:3, 49:19, 50:2, 50:7, 51:4, 51:5, 51:8, 51:15, 51:24, 52:1, 53:3, 54:10, 55:7, 55:15, 55:18, 55:25, 58:7, 58:12, 59:25, 60:1, 60:4, 62:13, 62:17, 62:24, 63:23, 65:12

**thinking** <sup>[1]</sup> - 51:18

**thinly** <sup>[2]</sup> - 30:15, 30:17

**This** <sup>[1]</sup> - 21:25

**this** <sup>[133]</sup> - 3:12, 3:17, 3:25, 4:4, 4:6, 4:10, 4:13, 4:14, 5:14, 5:18, 5:19, 6:17, 7:10, 9:15, 9:18, 9:23, 11:1, 11:8, 11:10, 12:15, 12:16, 12:23, 13:20, 14:1, 14:3, 14:6, 14:9, 15:10, 15:14, 15:24, 15:25, 16:11, 16:20, 16:23, 17:25, 18:19, 18:21, 18:22, 19:8, 19:23, 20:4, 20:13, 20:24, 22:7, 23:14, 25:10, 26:4, 29:23, 30:5, 30:16, 30:17, 30:19, 31:20, 31:22, 31:24, 32:3, 32:8, 32:11, 32:19, 34:9, 34:15, 36:8, 38:16, 39:3, 39:17, 40:4, 40:6, 40:20, 41:10, 41:11, 41:18, 41:24, 42:2, 42:10, 42:16, 43:2, 45:3, 46:14, 47:7, 47:25, 48:10, 48:25, 49:1, 49:20, 49:24, 51:2, 51:11, 52:1, 52:3, 52:19, 53:2, 53:7, 53:9, 53:10, 53:13, 54:2, 54:8, 54:11, 54:14, 55:3, 55:7, 55:21, 55:24, 56:5, 57:5, 57:9, 57:22, 58:1, 58:19, 59:20, 59:23, 59:24, 60:4, 60:11, 60:18, 61:8, 61:19, 62:2, 62:8, 62:12, 62:16, 62:17, 62:25, 63:2, 63:3, 63:12, 64:1, 64:4, 64:12, 65:1, 65:15, 65:18

**THOMAS** <sup>[1]</sup> - 1:14

**Thomas** <sup>[1]</sup> - 28:13

**thorough** <sup>[1]</sup> - 58:22

**thoroughly** <sup>[1]</sup> - 62:11

**those** <sup>[23]</sup> - 6:8, 10:22, 16:5, 25:15, 28:2, 28:4, 37:3, 38:19, 38:24, 40:8, 40:10, 40:15, 41:14, 43:8, 44:9, 46:9, 47:25, 48:11, 49:9, 55:23, 56:6, 56:10, 59:12

**though** <sup>[6]</sup> - 16:6, 24:5, 24:17, 27:11, 31:1, 65:17

**thought** <sup>[3]</sup> - 19:16, 52:9, 64:17

**thousand** <sup>[4]</sup> - 10:4, 14:10, 22:21, 22:22

**thousands** <sup>[1]</sup> - 8:20

**threatened** <sup>[1]</sup> - 3:17

**threatening** <sup>[2]</sup> - 5:10, 5:11

**three** <sup>[19]</sup> - 4:4, 8:2, 8:13, 12:10, 14:23, 16:19, 19:23, 22:21, 33:21, 36:23, 36:24, 37:13, 37:14, 40:21, 43:24, 44:9,

44:10, 47:15, 55:3

**threshold** <sup>[1]</sup> - 43:20

**thresholds** <sup>[1]</sup> - 41:12

**through** <sup>[25]</sup> - 4:17, 6:13, 15:16, 18:4, 20:20, 23:17, 29:16, 30:18, 30:19, 33:9, 33:19, 41:9, 42:9, 43:2, 43:19, 44:13, 45:13, 47:19, 49:7, 50:20, 57:15, 57:18, 62:14, 65:22

**throughout** <sup>[1]</sup> - 38:16

**ticker** <sup>[13]</sup> - 8:14, 13:9, 14:12, 18:17, 19:8, 30:2, 30:5, 33:4, 40:12, 42:23, 43:5, 43:15, 64:10

**tickers** <sup>[10]</sup> - 12:7, 13:21, 18:23, 29:19, 33:3, 33:18, 38:17, 45:15, 59:13, 64:10

**tied** <sup>[2]</sup> - 56:24, 59:13

**time** <sup>[36]</sup> - 5:9, 7:12, 9:15, 10:13, 10:15, 12:20, 12:23, 13:3, 13:15, 14:10, 14:15, 15:22, 16:12, 17:13, 18:1, 18:17, 20:10, 21:15, 24:12, 25:2, 25:6, 25:16, 26:7, 26:9, 31:22, 32:17, 34:6, 48:25, 49:10, 50:3, 52:2, 55:25, 56:9, 62:11, 64:14, 65:18

**times** <sup>[5]</sup> - 9:23, 14:14, 14:18, 32:1, 38:3

**to** <sup>[479]</sup> - 3:2, 3:4, 3:6, 3:11, 3:14, 3:16, 3:17, 3:18, 3:24, 4:3, 4:8, 4:10, 4:11, 4:17, 4:20, 5:1, 5:4, 5:7, 5:11, 5:12, 5:16, 5:18, 5:20, 5:24, 5:25, 6:1, 6:4, 6:6, 6:9, 6:10, 6:12, 6:14, 6:15, 6:21, 6:25, 7:6, 7:7, 7:10, 7:12, 7:17, 7:21, 8:2, 8:3, 8:10, 8:20, 8:22, 9:1, 9:3, 9:5, 9:7, 9:10, 9:11, 9:12, 9:17, 9:20, 10:6, 10:11, 10:12, 11:4, 11:5, 11:6, 11:8, 11:11, 11:13, 11:23, 11:24, 12:5, 12:8, 12:11, 12:13, 12:15, 12:16, 12:18, 12:22, 12:25, 13:11, 13:13, 13:16, 13:21, 13:23, 13:25, 14:1, 15:2, 15:6, 15:10, 15:11, 15:12, 15:15, 15:17, 15:21, 15:23, 15:24, 16:13, 16:14, 16:16, 16:17, 16:18, 16:19, 16:24, 16:25, 17:5, 17:6, 17:8, 17:9, 17:11, 17:15, 17:17, 18:4, 18:9, 18:14, 18:21, 18:25, 19:3, 19:4, 19:8, 19:9, 19:11, 19:12, 19:25, 20:2, 20:7, 20:8, 20:14, 20:23, 21:5, 21:6, 21:7, 21:13, 21:15, 21:16, 21:23, 22:3, 22:5, 23:11, 23:13, 23:14, 23:17, 23:23, 23:25, 24:1, 24:3, 24:5, 24:6, 24:11, 24:14, 24:16, 24:17, 24:19, 25:2, 25:3, 25:4, 25:5, 25:7, 25:8, 25:9, 25:13, 25:15, 25:20, 25:21, 25:22, 25:24, 25:25, 26:2, 26:6, 26:10, 26:12, 26:16, 27:4, 27:11, 27:21, 27:25, 28:6, 28:21, 28:22, 28:24, 28:25, 29:2, 29:4, 29:11, 29:19, 29:21, 30:1, 30:4, 30:12, 30:20, 30:25, 31:5, 31:17, 31:22, 31:25, 32:5, 32:13, 32:15, 32:16, 32:18, 32:20, 32:22, 33:6, 33:17, 33:23, 34:1, 34:8, 34:10, 34:13, 34:25, 35:2, 35:3, 35:4, 35:5, 35:14, 36:5, 36:7, 36:13, 36:16, 36:18, 36:22, 37:1, 37:2, 37:4,

37:9, 37:10, 37:21, 37:22, 38:5, 38:10, 38:11, 38:14, 38:15, 38:18, 38:22, 39:1, 39:2, 39:8, 39:13, 39:17, 39:19, 39:20, 39:23, 40:5, 40:6, 41:3, 41:4, 41:6, 41:12, 41:14, 41:15, 41:19, 41:23, 42:8, 42:11, 42:12, 43:2, 43:4, 43:5, 43:9, 43:12, 43:15, 43:17, 43:18, 43:19, 43:25, 44:1, 44:4, 44:19, 44:20, 44:23, 45:5, 45:11, 45:13, 45:22, 46:1, 46:4, 46:12, 46:14, 46:21, 46:23, 47:1, 47:3, 47:6, 47:7, 47:11, 47:15, 47:16, 47:22, 47:24, 48:3, 48:4, 48:6, 48:7, 48:18, 48:24, 48:25, 49:1, 49:7, 49:10, 49:14, 49:19, 49:21, 49:23, 49:25, 50:3, 50:4, 50:5, 50:7, 50:9, 50:10, 50:15, 50:19, 50:20, 50:22, 51:2, 51:6, 51:8, 51:10, 51:13, 51:16, 51:20, 51:21, 51:22, 52:8, 52:18, 52:19, 52:22, 52:25, 53:3, 53:4, 53:13, 53:17, 53:20, 54:8, 54:12, 54:14, 54:16, 54:19, 54:24, 54:25, 55:1, 55:8, 55:12, 55:14, 55:16, 55:18, 55:19, 56:4, 56:6, 56:10, 56:13, 56:17, 56:21, 56:24, 56:25, 57:6, 57:7, 57:9, 57:10, 57:12, 57:19, 57:22, 57:23, 58:1, 58:3, 58:13, 58:14, 58:15, 58:22, 58:23, 58:25, 59:1, 59:13, 59:14, 59:19, 59:22, 60:3, 60:5, 60:7, 60:10, 60:11, 60:17, 60:22, 61:3, 61:4, 61:8, 61:9, 61:15, 61:18, 61:19, 61:24, 61:25, 62:6, 62:8, 62:11, 62:14, 62:17, 63:1, 63:2, 63:3, 63:4, 63:5, 63:6, 63:9, 63:10, 63:11, 63:13, 63:18, 63:24, 64:4, 64:5, 64:19, 65:1, 65:6, 65:9, 65:14, 65:18, 65:20, 66:5  
**today** [6] - 56:24, 57:17, 62:1, 65:4, 65:14, 65:22  
**together** [3] - 20:24, 35:10, 37:18  
**told** [5] - 11:10, 23:7, 28:15, 28:25, 31:2  
**toned** [1] - 7:6  
**too** [6] - 5:6, 14:8, 53:15, 56:21, 64:16, 64:18  
**took** [6] - 11:1, 25:4, 33:13, 35:22, 40:21, 52:22  
**topic** [1] - 27:12  
**total** [1] - 37:16  
**totality** [1] - 49:25  
**towards** [1] - 62:2  
**trace** [1] - 36:13  
**traceable** [1] - 41:19  
**traced** [1] - 36:6  
**track** [2] - 63:1, 63:3  
**tracks** [1] - 62:25  
**trade** [4] - 16:2, 16:10, 16:22, 23:6  
**traded** [3] - 13:2, 29:19, 30:3  
**trader** [5] - 10:18, 23:21, 34:17, 34:22, 40:22  
**traders** [2] - 24:2, 25:10  
**trades** [2] - 36:2, 45:10  
**trading** [9] - 22:19, 37:7, 44:5, 44:11, 46:16, 46:22, 49:7, 59:16, 59:21

**Trading** [2] - 18:13, 19:6  
**traffic** [2] - 10:1  
**transactions** [2] - 26:5, 51:7  
**transcript** [2] - 1:25, 66:5  
**TRANSCRIPT** [1] - 1:10  
**transcripts** [3] - 7:16, 15:13, 18:5  
**treat** [1] - 63:8  
**trial** [29] - 16:17, 19:11, 43:8, 43:10, 48:23, 49:14, 50:4, 50:10, 50:11, 51:25, 52:1, 52:5, 52:10, 52:17, 53:5, 53:7, 53:10, 53:20, 58:19, 59:1, 59:22, 60:12, 60:25, 61:9, 61:16, 61:25, 64:6, 64:11  
**trial-ready** [1] - 59:1  
**trials** [1] - 61:2  
**tried** [1] - 36:5  
**troll** [1] - 18:4  
**troubling** [2] - 4:8, 4:10  
**true** [10] - 9:13, 10:13, 11:6, 16:2, 16:10, 30:14, 45:16, 50:18, 62:18, 66:5  
**truncated** [1] - 48:25  
**trust** [5] - 32:21, 44:3, 46:5, 47:2  
**trusting** [1] - 21:23  
**truth** [8] - 22:4, 38:1, 38:13, 38:24, 45:9, 45:17, 51:23, 65:10  
**try** [6] - 7:11, 34:8, 34:13, 48:25, 54:5, 65:1  
**trying** [5] - 28:24, 30:20, 43:12, 44:20, 49:16  
**turned** [2] - 6:17, 40:21  
**tweet** [5] - 10:16, 14:20, 30:9, 30:23, 33:13  
**tweeted** [5] - 14:14, 15:17, 18:19, 31:5, 33:25  
**tweeting** [2] - 31:16, 32:11  
**tweets** [14] - 8:12, 9:3, 9:9, 14:23, 15:24, 16:19, 21:1, 22:12, 33:21, 34:4, 38:6, 38:19, 38:24, 64:10  
**Twitter** [9] - 4:6, 14:16, 15:16, 18:13, 19:6, 32:4, 34:10, 55:23, 59:20  
**twittering** [1] - 32:22  
**two** [20] - 8:14, 8:22, 11:2, 15:19, 16:18, 19:23, 24:8, 34:25, 36:4, 37:24, 44:23, 45:2, 45:14, 47:12, 50:8, 59:14, 62:25, 64:15, 64:22, 64:23  
**type** [8] - 10:5, 26:4, 31:3, 32:21, 40:8, 45:22, 55:12, 63:8  
**types** [4] - 8:22, 19:22, 19:24, 20:4

## U

**U.S** [3] - 1:14, 1:18, 47:2  
**ultimately** [2] - 23:23, 43:11  
**Ultra** [1] - 31:16  
**uncontested** [1] - 45:15  
**undeniably** [1] - 16:2  
**under** [20] - 5:1, 7:25, 8:5, 8:9, 11:16, 29:9, 35:16, 35:17, 35:25, 36:7, 39:18, 40:14, 41:4, 41:6, 41:15, 47:12, 47:13, 53:19, 56:14, 64:7  
**underlying** [1] - 55:6

**underneath** [1] - 53:5  
**understand** [16] - 5:19, 6:8, 7:1, 14:2, 19:25, 26:11, 42:9, 45:24, 47:1, 47:24, 48:22, 49:7, 50:21, 51:21, 60:16, 64:19  
**understandably** [1] - 56:3  
**understanding** [3] - 51:3, 56:5, 66:6  
**understood** [1] - 4:22  
**undisputed** [1] - 36:12  
**unfortunately** [1] - 41:7  
**unindicted** [1] - 57:21  
**UNITED** [3] - 1:1, 1:4, 1:11  
**United** [7] - 2:10, 3:8, 17:24, 24:1, 30:20, 33:23, 66:4  
**universe** [1] - 63:25  
**unjust** [1] - 39:20  
**unlawfully** [1] - 39:12  
**unless** [1] - 51:23  
**unlike** [1] - 32:4  
**unpack** [1] - 17:17  
**untainted** [1] - 42:4  
**until** [5] - 16:7, 47:3, 53:7, 57:25, 59:25  
**untrue** [1] - 22:3  
**unusual** [1] - 32:19  
**up** [33] - 5:3, 10:9, 10:19, 10:21, 12:8, 12:11, 13:25, 14:1, 14:22, 15:8, 16:7, 16:9, 16:23, 17:7, 25:5, 27:12, 29:15, 29:19, 32:12, 36:19, 39:3, 45:11, 50:12, 50:19, 51:4, 52:20, 56:23, 61:3, 61:21, 65:3, 65:6, 65:17  
**uphill** [1] - 53:18  
**upon** [4] - 7:19, 27:15, 38:15, 38:18  
**upside** [1] - 6:17  
**us** [22] - 3:11, 8:20, 11:18, 11:20, 12:14, 15:3, 28:24, 28:25, 34:24, 47:24, 49:3, 49:7, 51:21, 53:4, 53:5, 56:16, 57:13, 57:22, 57:25, 61:13, 61:15, 65:22  
**USC** [1] - 36:8  
**use** [7] - 6:5, 20:8, 39:2, 39:9, 39:10, 41:23, 43:14  
**used** [6] - 20:14, 29:21, 38:22, 41:16, 45:5, 58:17  
**uses** [1] - 35:7  
**using** [1] - 53:23

## V

**v** [1] - 29:9  
**vagueness** [1] - 24:3  
**Valentine's** [1] - 65:22  
**valid** [2] - 17:21, 40:12  
**validly** [1] - 43:12  
**valuable** [1] - 62:8  
**value** [1] - 21:6  
**variety** [1] - 31:25  
**various** [3] - 19:22, 49:8, 60:15  
**vehicle** [3] - 45:19, 45:21, 46:25  
**vehicles** [6] - 27:17, 27:21, 28:1, 28:2, 29:3

**verdict** [1] - 54:6  
**versus** [2] - 17:24, 39:2  
**very** [17] - 3:11, 3:23, 4:3, 11:15, 21:6, 39:11, 44:23, 45:3, 48:25, 51:5, 51:9, 51:10, 54:21, 59:14, 61:3, 61:13  
**via** [1] - 1:25  
**victim** [2] - 4:4, 5:19  
**victims** [7] - 4:6, 4:10, 7:6, 46:14, 46:15, 47:11, 65:15  
**view** [2] - 6:3, 65:1  
**views** [1] - 5:10  
**violated** [2] - 8:3, 46:10  
**violation** [2] - 11:14, 50:5  
**violations** [3] - 4:1, 8:6, 8:7  
**visualize** [2] - 12:12, 20:23  
**volume** [3] - 10:16, 64:10, 64:13  
**voluminous** [2] - 14:8, 54:18  
**VS** [1] - 1:6

## W

**waive** [2] - 51:25, 52:17  
**waived** [2] - 50:8, 51:25  
**walk** [2] - 23:17, 34:14  
**want** [33] - 3:4, 6:15, 7:7, 12:5, 12:11, 13:25, 16:25, 25:21, 27:4, 27:11, 42:11, 43:25, 45:25, 49:13, 49:14, 49:23, 51:13, 52:18, 53:13, 54:19, 55:2, 56:4, 56:21, 58:22, 58:23, 58:25, 60:17, 61:4, 61:8, 61:18, 62:14, 63:4  
**wanted** [3] - 52:19, 54:25, 57:7  
**wants** [10] - 3:6, 6:4, 17:15, 19:25, 29:11, 39:23, 41:6, 42:8, 43:18, 64:4  
**warming** [1] - 9:18  
**warrant** [6] - 30:8, 40:17, 41:9, 42:3, 43:13, 45:4  
**warrants** [3] - 27:14, 27:25, 41:2  
**was** [82] - 3:20, 3:22, 4:22, 4:23, 5:1, 6:18, 7:5, 9:19, 10:1, 11:8, 11:10, 11:22, 11:23, 13:22, 14:1, 16:17, 16:18, 17:1, 17:25, 23:3, 23:6, 25:6, 28:24, 29:5, 29:12, 29:13, 29:21, 30:10, 30:13, 30:15, 30:22, 30:25, 31:11, 31:12, 31:18, 32:14, 33:4, 33:14, 33:24, 34:1, 34:5, 34:22, 34:23, 35:9, 35:10, 35:11, 35:12, 35:21, 36:15, 39:12, 40:10, 42:25, 44:20, 44:21, 46:7, 50:14, 50:18, 52:9, 52:11, 53:1, 53:23, 54:1, 54:2, 54:13, 55:2, 55:17, 56:8, 59:25, 60:2, 60:6, 62:20, 62:22, 62:24  
**Washington** [1] - 1:19  
**wasn't** [6] - 33:14, 35:10, 38:11, 42:22, 53:1, 53:23  
**way** [13] - 15:19, 20:13, 31:20, 35:4, 40:11, 40:13, 47:2, 49:16, 49:20, 50:19, 58:10, 62:19, 65:1  
**we** [160] - 3:10, 3:11, 3:14, 4:5, 6:2, 7:3, 7:15, 7:19, 7:24, 8:4, 8:11, 8:14, 8:23, 9:2, 10:2, 10:12, 10:13, 12:12, 14:3, 14:7, 14:13, 14:22, 15:5, 15:7,

15:12, 16:15, 16:16, 17:5, 17:7, 18:7, 18:11, 19:4, 19:10, 20:20, 21:20, 23:15, 26:16, 26:25, 27:10, 27:23, 28:22, 29:2, 29:5, 30:3, 30:8, 30:11, 30:12, 30:13, 31:3, 31:5, 31:8, 32:2, 32:3, 32:13, 33:2, 33:5, 33:6, 33:8, 33:12, 33:17, 33:21, 34:3, 34:10, 35:3, 35:11, 36:5, 36:7, 36:9, 36:14, 37:4, 37:9, 37:10, 37:20, 37:23, 38:6, 38:14, 38:19, 38:25, 39:1, 39:2, 39:16, 39:17, 40:1, 40:5, 40:18, 40:19, 41:2, 41:5, 41:12, 42:5, 42:10, 43:2, 44:1, 44:16, 46:15, 46:16, 46:23, 48:9, 48:19, 49:24, 50:7, 50:17, 51:15, 52:2, 52:3, 52:5, 52:13, 52:22, 52:23, 53:1, 53:3, 53:9, 54:3, 54:9, 54:23, 54:25, 55:2, 55:6, 55:14, 56:17, 57:2, 57:4, 57:13, 58:2, 58:7, 58:22, 58:23, 58:24, 58:25, 59:2, 59:5, 60:2, 60:3, 61:3, 61:14, 62:1, 62:3, 62:7, 62:10, 63:22, 65:2, 65:7, 65:13  
**we'd** [1] - 62:6  
**we'll** [5] - 13:6, 15:20, 27:10, 64:25  
**we're** [34] - 3:3, 4:3, 6:14, 18:18, 19:10, 19:11, 23:13, 23:25, 27:12, 28:17, 29:1, 31:9, 31:10, 32:3, 36:15, 37:2, 37:9, 37:12, 39:13, 39:19, 43:11, 46:18, 49:5, 50:8, 51:5, 51:10, 51:19, 55:1, 57:11, 58:3, 62:17, 64:7  
**we've** [26] - 10:14, 10:20, 13:20, 18:24, 27:15, 29:4, 32:2, 38:1, 38:2, 38:4, 38:9, 38:13, 38:17, 39:12, 39:18, 39:20, 43:3, 45:14, 48:14, 48:23, 50:8, 51:9, 62:1  
**weeks** [3] - 28:24, 64:22, 64:23  
**weigh** [6] - 39:23, 51:13, 54:19, 60:18, 61:24, 64:4  
**Well** [6] - 36:5, 42:3, 42:25, 54:5, 56:13, 61:19  
**well** [32] - 6:1, 7:16, 13:25, 14:3, 14:4, 15:12, 18:5, 19:13, 23:9, 23:18, 23:25, 24:8, 27:18, 28:11, 32:13, 32:16, 33:1, 36:21, 40:8, 40:9, 42:5, 42:21, 46:24, 47:19, 50:20, 51:1, 52:12, 53:9, 56:14, 56:23, 61:13, 64:3  
**went** [6] - 9:12, 19:17, 32:14, 32:18, 33:8, 44:12  
**were** [43] - 5:7, 6:8, 9:4, 9:13, 9:15, 9:16, 12:9, 12:25, 13:5, 13:20, 14:7, 17:6, 17:8, 18:11, 20:6, 20:15, 25:2, 25:12, 25:13, 27:25, 28:14, 29:14, 29:15, 29:20, 30:21, 32:17, 35:21, 36:1, 36:3, 37:16, 37:21, 38:18, 40:12, 41:4, 44:11, 45:10, 48:10, 48:23, 50:13, 66:1  
**weren't** [3] - 3:14, 16:5, 38:7  
**what** [114] - 4:24, 5:1, 7:5, 8:11, 8:17, 10:2, 10:14, 11:6, 12:12, 12:16, 13:17, 13:19, 13:21, 14:9, 15:2, 15:21, 16:17, 17:9, 18:11, 18:18, 19:10, 19:15, 19:19, 21:8, 21:20, 21:24, 22:18, 23:11, 23:15, 23:20, 23:23, 24:7, 24:9, 25:16, 25:22,

26:12, 26:14, 27:20, 28:24, 29:20, 29:21, 30:1, 30:9, 30:13, 31:11, 31:12, 31:13, 32:13, 32:16, 33:12, 34:7, 35:10, 36:14, 36:16, 38:9, 38:14, 38:15, 38:24, 39:1, 39:12, 40:9, 42:5, 42:6, 42:15, 42:21, 43:5, 43:11, 44:5, 44:20, 45:22, 46:3, 46:19, 47:4, 47:25, 49:5, 50:13, 50:17, 50:19, 51:7, 51:15, 53:3, 53:14, 53:20, 54:1, 55:6, 55:16, 55:17, 56:16, 56:17, 57:13, 57:17, 57:23, 58:1, 58:20, 59:15, 59:22, 59:24, 59:25, 60:6, 62:1, 62:3, 62:5, 62:23, 64:11, 65:3, 65:4, 65:7, 65:21  
**What** [1] - 55:18  
**what's** [7] - 40:16, 44:8, 48:20, 52:7, 60:6, 63:25, 65:8  
**whatsoever** [2] - 31:17, 31:19  
**when** [16] - 7:11, 22:19, 23:22, 27:12, 28:14, 28:23, 32:17, 34:4, 35:22, 42:5, 44:5, 48:2, 51:3, 53:5, 54:2, 58:11  
**where** [23] - 3:21, 5:6, 7:12, 9:15, 10:21, 10:24, 13:9, 27:21, 27:22, 27:23, 28:10, 30:17, 32:24, 33:4, 35:20, 36:8, 54:14, 58:19, 60:8, 60:12, 60:14, 64:6  
**whether** [11] - 9:1, 24:6, 28:4, 28:5, 28:7, 30:25, 39:1, 39:2, 45:20, 50:4, 56:13  
**which** [49] - 4:6, 5:10, 9:10, 9:11, 9:18, 10:5, 13:8, 13:9, 13:15, 14:19, 17:3, 17:24, 19:3, 20:1, 20:25, 22:1, 23:8, 29:4, 30:2, 30:7, 30:9, 34:2, 35:13, 37:17, 37:20, 39:12, 40:3, 40:9, 40:16, 41:2, 41:22, 41:24, 42:3, 42:10, 42:13, 42:15, 43:15, 43:16, 44:7, 44:13, 45:4, 45:11, 46:5, 54:23, 55:12, 55:17, 58:6, 59:1, 59:14  
**while** [4] - 16:25, 22:24, 47:11, 49:22  
**who** [17] - 3:6, 5:15, 16:5, 17:15, 21:23, 24:16, 25:2, 25:8, 25:18, 27:21, 31:16, 39:23, 42:22, 51:19, 52:25, 57:21, 57:22  
**who's** [1] - 27:22  
**whole** [3] - 6:17, 32:14, 35:7  
**whom** [1] - 29:15  
**why** [26] - 3:25, 5:24, 8:18, 9:20, 11:18, 12:1, 13:6, 13:16, 15:3, 15:12, 16:16, 17:5, 19:25, 21:25, 23:19, 26:25, 34:8, 35:3, 46:12, 52:19, 56:25, 57:4, 57:5, 58:18, 61:20, 65:11  
**wildly** [1] - 29:22  
**will** [25] - 4:20, 7:8, 14:13, 24:20, 27:8, 39:25, 40:5, 47:1, 48:1, 50:21, 50:22, 50:25, 52:23, 53:11, 57:14, 58:2, 59:2, 61:3, 61:5, 61:11, 62:8, 63:9, 65:16, 65:18  
**WILLIAMS** [3] - 2:5, 64:8, 65:21  
**Williams** [3] - 17:24, 58:23, 65:6  
**willing** [2] - 23:25, 55:1  
**winds** [1] - 10:21  
**wire** [2] - 22:1, 54:12



**wires** [1] - 36:2

**with** [71] - 3:4, 3:14, 4:22, 4:24, 4:25, 5:4, 5:15, 5:16, 5:22, 7:7, 7:17, 8:16, 10:6, 10:12, 10:19, 11:4, 11:11, 12:2, 12:5, 12:22, 14:3, 14:4, 14:18, 15:14, 16:22, 16:23, 17:7, 22:2, 22:5, 24:3, 24:5, 24:6, 27:12, 30:2, 34:7, 34:8, 37:24, 38:25, 39:7, 43:11, 47:13, 47:17, 48:21, 49:13, 49:23, 50:6, 51:1, 51:2, 51:5, 51:15, 52:20, 54:3, 55:1, 55:12, 55:18, 57:21, 58:13, 58:16, 59:4, 59:19, 59:20, 60:15, 60:22, 61:7, 61:16, 61:25, 62:4, 63:23, 64:1, 64:21

**within** [2] - 28:18, 36:11

**without** [6] - 22:7, 26:5, 26:6, 29:14, 46:9, 47:20

**witness** [6] - 3:17, 3:18, 4:9, 5:19

**witness's** [1] - 3:21

**witnesses** [2] - 4:13, 7:12

**woke** [1] - 10:19

**won't** [3] - 6:19, 51:25, 65:18

**word** [2] - 12:2, 15:1

**words** [4] - 20:22, 52:8, 52:22, 65:5

**work** [8] - 6:14, 14:2, 52:23, 52:24, 53:14, 60:23, 61:3, 64:25

**work-around** [1] - 6:14

**working** [1] - 64:7

**works** [1] - 14:4

**world** [4] - 21:12, 22:24, 30:20, 49:20

**worried** [1] - 60:16

**worry** [6] - 46:15, 46:16, 57:23, 58:14, 58:15, 65:20

**worth** [2] - 10:19, 36:3

**would** [41] - 6:2, 7:21, 9:10, 9:11, 13:5, 13:16, 13:18, 15:7, 15:10, 16:18, 23:17, 28:11, 37:22, 39:20, 41:2, 41:5, 42:24, 43:15, 43:16, 46:3, 46:13, 46:15, 46:16, 46:17, 46:23, 51:15, 51:18, 51:22, 52:4, 52:5, 54:5, 55:17, 55:25, 56:2, 59:9, 59:18, 63:22, 64:1, 64:20, 64:21

**wouldn't** [2] - 3:11, 47:3

**wrap** [1] - 39:3

**write** [1] - 34:24

**writing** [2] - 61:5, 61:17

**written** [1] - 48:15

**wrong** [3] - 10:25, 39:7, 60:1

**wrote** [1] - 34:4

## Y

**y'all** [8] - 52:20, 57:7, 62:14, 63:1, 63:9, 63:10, 64:18, 65:24

**yeah** [3] - 33:11, 59:8, 59:12

**year** [5] - 26:1, 36:8, 36:11, 36:12, 52:5

**years** [9] - 12:10, 16:7, 25:4, 25:9, 26:1, 26:2, 34:25, 40:21, 45:3

**yeoman** [1] - 60:22

**yeoman-like** [1] - 60:22

**yes** [13] - 6:23, 7:2, 7:15, 7:23, 26:24, 27:3, 27:4, 44:19, 44:25, 51:14, 54:21,

64:24

**yet** [1] - 48:16

**York** [1] - 1:19

**you** [131] - 3:14, 4:16, 5:13, 5:14, 6:2, 6:4, 6:5, 6:18, 6:21, 6:25, 7:1, 7:9, 7:13, 7:14, 7:21, 7:22, 8:22, 10:6, 12:12, 13:20, 13:21, 14:13, 15:20, 17:10, 17:12, 17:14, 17:16, 18:2, 19:16, 20:5, 20:11, 20:20, 21:2, 21:3, 21:9, 21:12, 23:17, 23:22, 24:22, 25:1, 25:22, 25:23, 25:24, 25:25, 26:2, 26:9, 26:19, 26:21, 27:4, 27:18, 28:13, 30:16, 31:3, 32:7, 33:10, 35:10, 36:19, 38:11, 38:12, 39:6, 39:9, 39:10, 39:11, 39:22, 39:25, 40:9, 40:13, 41:4, 42:10, 42:11, 42:12, 43:21, 43:22, 44:5, 45:7, 48:2, 48:8, 48:20, 50:12, 50:13, 50:14, 50:17, 50:19, 50:20, 51:13, 54:4, 54:15, 54:19, 54:21, 55:21, 56:5, 56:8, 56:25, 57:3, 57:11, 57:12, 57:14, 58:1, 58:10, 58:11, 58:12, 58:17, 58:18, 58:20, 60:9, 60:10, 60:14, 61:20, 61:22, 62:18, 62:20, 63:4, 63:15, 63:20, 65:4, 65:8, 65:17, 65:18, 65:20, 65:25

**you'd** [1] - 44:7

**you'll** [6] - 12:5, 12:11, 12:23, 15:9, 20:21, 44:6

**you're** [3] - 26:12, 26:13, 39:7

**you've** [5] - 44:10, 49:21, 58:14, 63:6

**young** [1] - 64:19

**your** [19] - 6:15, 7:4, 9:24, 11:21, 11:23, 26:11, 26:14, 39:6, 39:12, 39:23, 44:4, 44:19, 45:24, 46:2, 48:6, 49:12, 58:14, 63:9, 64:23

**Your** [66] - 3:7, 3:10, 4:16, 6:16, 7:2, 12:15, 15:22, 17:5, 17:16, 17:17, 18:5, 18:8, 19:21, 20:20, 22:2, 23:13, 26:19, 27:10, 27:13, 27:24, 28:11, 28:21, 29:1, 29:10, 36:14, 37:19, 39:4, 39:25, 40:1, 43:11, 43:21, 44:6, 44:22, 46:7, 46:13, 46:25, 47:22, 48:8, 48:22, 49:21, 51:12, 52:8, 52:9, 52:16, 52:21, 52:22, 53:16, 53:18, 54:10, 54:15, 54:21, 56:2, 57:14, 58:6, 58:16, 59:12, 59:18, 60:20, 61:9, 61:22, 61:23, 63:22, 64:16, 64:24, 65:11

## Z

**Zack** [1] - 16:5

**zero** [3] - 14:17, 14:21, 32:15

**zillion** [1] - 55:23